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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th November, 2013

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W.P.(C) 10881/2009

ALL INDIA MANAGEMENT ASSOCIATION Petitioner
Through Mr. Ajay Vohra, Ms. Kavita
Jha and Mr. Vaibhav Kulkarni, Advocates.

versus

DG OF INCOME TAX (E) & ORS. Respondent
Through Mr. Rohit Madan, Sr. Standing
Counsel with Mr. Ruchir Bhatia, Advocate.

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W.P.(C) 1735/2012

ALL INDIA MANAGEMENT ASSOCIATION & ANR
.... Petitioner
Through Mr. Ajay Vohra, Ms. Kavita
Jha and Mr. Vaibhav Kulkarni, Advocates.

versus

DIRECTOR GENERAL OF INCOME TAX(E) & ORS
..... Respondent
Through Mr. Rohit Madan, Sr. Standing
Counsel with Mr. Ruchir Bhatia, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL)

This common judgment will dispose of the aforesaid two

connected writ petitions filed by All India Management Association impugning order dated 29th July, 2009 relating to assessment years 2005-06 to 2007-08 and order dated 28th February, 2012 relating to assessment year 2008-09 and onwards. These orders have been passed by the Director General of Income Tax (Exemptions) in exercise of powers under Section 10(23C)(vi) of the Income Tax Act, 1961 (Act, for short). In brief, in the impugned orders it has been held that the activities undertaken by the petitioner do not fall in the category of “other educational institutions” and, secondly, the petitioner was indulging in business but was not maintaining separate books of accounts. We shall elaborate upon the findings recorded by the Director General of Income Tax (Exemptions) in later portion of this judgment.

2. At the outset, undisputed facts may be noted. The petitioner is a society registered under the Societies Registration Act, 1860 with the Registrar of Societies, Delhi since 1960. From the beginning the petitioner society was granted exemption or treated as a charitable institution under the provisions of the Act. Petitioner was granted exemption under Section 10(22) of the Act up to 1998-99. After substitution of Section 10(22) by Section 10(23C), the petitioner was granted exemption under clause (vi) with effect from 1st April, 1999 onwards. The petitioner has placed on record order dated 16th October,

2000 for the period 1999-2000, 2000-01 and 2001-02. The petitioner has also placed on record order dated 15th October, 2003 for the period 2002-03, 2003-04 and 2004-05. For the period 2005-06 to 2007-08, notification under Section 10(23C)(vi) was issued on 9th September, 2005. Similarly, for the period 2008-09 onwards tax notification was issued vide order dated 26th May, 2008. The first impugned order dated 29th July, 2009 seeks and cancels the said notification for the period 2005-06 to 2007-08. The second impugned order dated 28th February, 2012 seeks and cancels the registration of the petitioner under Section 10(23C)(vi) for the period 2008-09 onwards. At the outset, we notice that the power to cancel a registration already granted is stipulated and governed by 13th proviso to Section 10(23C) which reads as under:-

“Provided also that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government [or is approved by the prescribed authority, as the case may be,] or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that-

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not

(A) *applied its income in accordance with the provisions contained in clause (a) of the third proviso; or*

(B) *invested or deposited its funds in accordance with the provisions contained in*

clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution-

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity or showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and for a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other education institution or any hospital or other medical institution and to the Assessing Officer.”

3. The Director General, therefore, before cancelling a registration already granted has to ensure and arrive at a finding that the stipulations or pre-conditions mentioned in the aforesaid proviso are satisfied.

4. The two impugned orders in question refer to the fact that the petitioner has been conducting examinations like Management Aptitude Test (MAT), screening and admission tests. MAT is a national level test and the scores obtained in the said examination were/are recognised by business schools for admission to their MBA and allied programmes. The said exams were/are conducted four times in a year. The petitioner charges fee from the

students who take the said examinations/tests. The petitioner had also conducted admission and selection tests for screening of candidates for admission to programmes, other than MBA and for induction of employees at various levels in different organisations. For this purpose, the petitioner was authorised and paid by the organizations including government bodies like Air India. This, according to the Director General as mentioned in the impugned orders, showed and established that the petitioner was not carrying on “solely educational activities” and, therefore, did not qualify and meet the prescribed parameters of Section 10(23C)(vi).

5. Section 10(23C) (vi) of the Act reads as under:-

“(23C) any income received by any person on behalf of
(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 (iiiad) and which may be approved by the prescribed authority.”

6. The expression “educational purposes” used in the said section has come up for interpretation in several cases and the test prescribed are no longer *res integra*. A reading of the provision shows that a university or other educational institution existing solely for educational purposes qualify under the said clause. Secondly, university or other educational institution should not be for the purpose

of profit. The second requirement is negative in nature, whereas the first requirement is positive. A similar controversy had arisen in the case of *Council for the Indian School Certificate Examinations vs. Director General of Income Tax* reported in 188 (2012) DLT 553 (DB). In the said case reference was made to the decision of the Orissa High Court in *Secondary Board of Education Vs. ITO*, (1972) 86 ITR 408 (Orissa) wherein it has been held that the Board in question was created to control secondary education, prescribe courses of study and award certificates to the successful candidates. It was also conducting examinations, etc. The High Court held that the Board was an educational institution and rejected the contention that the fee, etc. constitutes and should be regarded as activities for purpose of profit. Reference was also made to *Assam State Text Book Production and Publication Corporation Ltd. v. CIT*, (2009) 319 ITR 317 (SC) wherein decision in *Secondary Board of Education (supra)* was referred to and the Supreme Court approved the principle and ratio enunciated therein. It was held that the said corporation was engaged in educational purposes and, therefore, as an educational institution was entitled to exemption under Section 10 (22) of the Act. Both in the case of *Secondary Board of Education* and *Assam State Text Book Production and Publication Corporation Ltd.*^B (*supra*), the two institutions were not engaged in directly imparting education to

students or conducting teaching classes.

7. Similarly, Madhya Pradesh High Court in *CIT Vs. M.P. Rajya Pathya Pustak Nigam*, (2009) 226 CTR (MP) 497 referred to several decisions and has held that the term “educational purpose” was not restricted merely to holding of teaching classes or lectures but educational purpose is equally served when educational text books are published. Accordingly, in the case of *Council for the Indian School Certificate Examinations* it was observed as under:-

“7. It is, therefore, clear that courts have laid emphasis on the activity undertaken, while construing or deciding whether or not a particular institution can be regarded as an educational institution. The courts have repeatedly held that the holding of classes is not mandatory for an institution to qualify and to be treated as an educational institution. If the activity undertaken and engaged is educational, it is sufficient.

8. When we apply the aforesaid principle to the admitted nature of activity undertaken by the petitioner, we have no hesitation in quashing the impugned order dated 08.10.2008 and holding that the petitioner is an educational institution. Writ of certiorari is accordingly issued.....”

8. There is one more reason why the submission of the petitioner deserves acceptance. The petitioner has drawn our attention to the objects and purpose for which the petitioner society was setup. The main objects and reasons are as under:-

“i) Propagation of professional management in India.

- ii) To be and act as the apex body of the management profession and to enrol as its members, local management associations, government departments, corporate bodies, institutions, professional individuals.
 - iii) To undertake on its own and/or in collaboration with other educational and research institutions, education, training and research for the promotion and development of scientific management.
 - iv) To organise, hold and conduct meetings, group discussions, lectures, speeches, workshops, clinics, research projects, seminars, conferences, study programmes for the purpose of exchange and dissemination of information and ideas.
 - v) To organise classes for imparting education and training and to hold and conduct examinations or test in one or more aspects of management either by itself and/or in collaboration with other institutions having similar objects in such manner as may be considered necessary and to award certificates, diplomas, etc.
 - vi) To collect, analyse, collate, tabulate and circulate data, statistics, information etc., relating to or connected with any discipline of management;
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- xxiv) To make available the benefits of its activities to the public at large without restricting the same only to the members of the AIMA; and
 - xxv) The society shall be a non-profit making organisation and its income shall be utilised for promotion of its aims and objectives.”

9. Thus, the petitioner carries on varied and different activities and as a part of the activities also conducts aptitude, screening and selection tests. These tests cannot and should not be considered or be cynosure

in isolation, but as a part of their overall activities. This apart, the Revenue has not stated that the petitioner's Articles of Association, activities or their actual purpose has undergone any change from the date of setting up in 1960. The petitioner has continued to carry on the same "activities" through the passage of time. One of the activities undertaken by the petitioner was/is to conduct examinations and several candidates participate in the said examinations. Results secured help the colleges select students for further studies. Course material, syllabus, contents of papers, question paper etc. are insegregate part and parcel of the education system. Therefore, as held above, the petitioner cannot be denied the character of "other education institution" because it conducts examinations or tests.

10. At this stage, learned counsel for the respondents has drawn our attention to the findings recorded in the order dated 28th February, 2012. The said findings read as under:-

"13. The second activity of assessee is professional development programme from which assessee has earned income of Rs.6,52,82,034/- and Rs.6,10,23,991/- for the A.Y. 2008-09 and 2009-10 respectively. Under this head, the assessee is engaged in conducting short terms management development programme for two to three days. These programmes are organized in various hotels across the country for various corporate for which fees is being collected from the corporate regarding the candidates nominated by them. In these programmes, no degree or diploma is awarded. These are programmes only

for two to three days and cannot be termed as imparting of education as understood in view of decision of Hon'ble Supreme Court in the case of Sole Trustee, Lok Shikshan Trust Vs. CIT, 101 ITR 234, as by these short term programmes assessee is not training and developing the knowledge, skill and character of the students by normal schooling. Every imparting of information cannot be termed as education, in view of this decision. Thus, the programmes organized by assessee for various corporate to provide information to the candidates nominated by such corporate cannot be termed as educational activity. It is a professional consultancy activity of rendering services of organizing specialized development programmes for fees recoverable from the parties for whom such programmes are organized. It is therefore held that the professional development programmes is not the part of educational activity, but is an activity of deriving profit from business and profession. Claim of assessee of this activity being education, is therefore rejected.

14. Having held that Management Services & Professional Development Programmes are not educational activities but are activities deriving profit from business and profession, it has to be examined whether assessee maintains separate books of accounts for such activities, as required by the proviso below section 10(23C) whether the assessee is maintaining separate books of accounts or not is a matter of fact. The assessee was asked to produce the books of accounts, which were produced as per details mentioned in order sheet entries dated 20.01.2012 and 08.02.2012 for the AY 2008-09 and 2009-10 respectively.”

11. We have considered the said observation but the said findings are general and vague findings. They are conclusions without referring to full facts, contentions and legal position. In depth and proper

verification or examination is required to be made before it is held or observed that the activities of the petitioner were not genuinely charitable or were not being undertaken in accordance with the provisions of Section 10(23C)(vi). This necessarily entails and requires petitioner's cooperation and furnishing of full details. General observations should not and cannot become the basis of invoking 13th proviso to Section 10(23C). While examining the said aspect, the Director General has to keep in mind the decision and ratio in ***ICAI Accounting Research Foundation & Anr. Vs. Director General of Income Tax (Exemptions) & Others***, 2009 VII AD (Delhi) 586 and decision dated 19th November, 2011 in W.P.(C) 9986/2009, ***All India J.D. Educational Society Vs. Director General of Income Tax (Exemptions) Delhi*** in which terms "business" and "charity" have been elucidate and explained.

12. In view of the aforesaid position, we are inclined to pass an order of remit. The Director General will keep in mind the observations made in the two decisions and other cases, while deciding all aspects and questions.

13. Another incidental issue raised is whether the petitioner was maintaining separate books of accounts. The requirement to maintain separate books of account is stipulated in the 7th proviso to Section 10(23C) of the Act. The said proviso applies only if the authority

comes to the conclusion that the charitable institution is incidentally carrying on business for the purpose of attainment of objects. It is only in these circumstances that separate books of account are required to be maintained. Another aspect which arises is what is meant by the term “separate books of account”? The primary requirement is that the authority should be in a position to ascertain and know the income earned through incidental activity of business and there should not be overlapping or confusion relating to business activity and charitable activity. This is necessary as there are stipulations of application of funds for charitable activities and certain percentage of expenditure or outgo for charitable purposes is required under the Act. Full and fair earnings relating to business and amounts relating to charity should be ascertainable from the “separate books of accounts”.

14. As we have passed an order of remit, the Director General can also examine the aforesaid question. It is open to the petitioner to plead that the petitioner’s returns for the earlier years have been duly accepted by the Assessing Officer without any objection or observation that the maintenance of accounts was defective and separate books were not maintained for the “incidental business”. We also note that the petitioner has submitted that the Director General has accepted and issued exemption notification under Section 80G of the Act dated 4th March, 2010. Accordingly, it is submitted that there is contradiction in

the impugned orders, specially, in the order dated 29th July, 2009, as exemption under Section 80G was issued and granted subsequently. This aspect can be also highlighted at the time of hearing before the Director General.

15. In view of the aforesaid discussion, we allow the present writ petition and writ of certiorari is issued quashing the orders dated 29th July, 2009 and 28th February, 2012 and an order of remit is passed. The Director General of Income Tax (Exemptions) while deciding the issue will consider the observations made above but can ascertain full and true facts and after applying legal ratio, decide the question of cancellation afresh. The petitions are disposed of. No costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

**NOVEMBER 12, 2013
NA/VKR**