

Neutral Citation No:
CWP-20498-2013(O&M)

2024:PHHC:095411-DB



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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-20498-2013(O&M)
Decided on:29.07.2024

SHRI GURU HARGOBIND SAHIB CHARITABLE TRUST

.... Petitioner

Versus

CENTRAL BOARD OF DIRECT TAXES AND OTHERS

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Pankaj Jain, Sr. Advocate with
Mr. Divya Suri, Advocate for the petitioner.

Mr. Amanpreet Singh, Senior Standing Counsel
for the respondents.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Present writ petition has been preferred by Shri Guru Hargobind Sahib Charitable Trust, challenging the impugned order dated 03.09.2013 (Annexure P-9) passed by the Chief Commissioner of Income Tax Aayakar Bhawan, Rishi Nagar, Ludhiana, whereby the application preferred by the petitioner for exemption/approval under Section 10 (23 C) (vi) of the Income Tax Act, 1961(for short, 'the Act of 1961') for the assessment year 2012-13, was declined.

2. Learned Senior counsel for the petitioner submits that the trust was entitled for exemption under Section 10 (23C)(vi) of the Act of 1961 with respect to the income of the educational institution and as per the plain



reading of the said Section the income received was required to be exempted only if it was solely for the purpose of education. It was also urged that the surplus was only to be used for the educational purpose. Learned Senior Counsel for the petitioner relies upon the following judgments:-

(i) Geetanjali Education Society Vs. Assistant Director of Income Tax (Exemptions) (2014) 101 DTR (Kar) 337,

(ii) C.P. Vidya Niketan Inter College Shikshan Society Vs. UOI and others (2013) 359 ITR 322 (All),

(iii) Vanita Visharm Trust Vs. CCIT and another (2010) 327 ITR 121,

(iv) CIT Vs. Global Education Society ITA No.130 of 2013 (P&H),

(v) Digember Jain Society for Child Welfare Vs. Director General of Income Tax 2010 (329) ITR 459,

(vi) UOI Vs. Baba Banda Singh Bahadur Education Trust Civil Appeal No.10511 of 2013 (SC), 2023 (454) ITR 273, and

(vii) New Noble Educational Society Vs. CIT, 2023 (6) SCC 649.

3. Learned Senior counsel for the petitioner has taken this Court to the recent judgment passed by the Apex Court in case, ‘New Noble Educational Socieity Vs. Chief Commissioner of Income Tax 1 and another’, (2023) 6 SCC 649, and submits that the petitioner would be entitled to claim exemption.

4. Per contra, learned counsel appearing on behalf of the respondents submits that in view of the law laid down in New Noble Educational



Society's case (supra) as well as in view of subsequent judgment in case *Union of India's case(supra)*, petitioner would not be entitled to claim exemption.

5. It is further case of the learned Senior counsel for the petitioner that the petitioner-trust has been registered under Section 12AA of the Act of 1961 and the aims and objects of the entire memorandum of the society are for charitable purpose, to grant exemption under Section 10 (23 C) (iv) of the Act of 1961. Section 10 (23 C) (vi) of the Act of 1961 provides 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 (iiiad) and which may be approved by the prescribed authority;”

6. We have carefully considered the submissions and gone through the impugned order. From perusal of the impugned order it appears that the Authority has noticed the aims and objects of the trust mentioned in the memorandum of association, which are reproduced herebelow:

“5(i) The reply of the application has been considered. The memorandum of association of the society inter-alia includes the following objects:

(a) To work for social, moral, intellectual, spiritual and economic uplift of all mankind.

(b) To set-up, run and maintain Dispensers, Hospital, School and colleges for the advancement and education and for providing better health facilities to mankind.



(c) To organize and manage Eye Camps, Medical Camps and to provide free medicines to the need patients.

(d) To give economic assistance, clothes, medicines and all other social help to the needy and poor people without any distinction of cast or religion, colour or race.

(e) To hold Langars on various occasions and Gurburavas and spread the teachings of one-ness humanity and brotherhood of mankind.

(f) To conduct, organize and manage Meditation centres and to teach the right way and path to spiritualism for all mankind without any distinction of religion or cast, colour or race.

(g) To acquire land, building on lease, purchase, donation from Public or Government for the purpose of setting up of Meditation Centres, Hospitals, Dispensaries and Educational Institutions.

(h) Affording of medical relief in such manner as Trustees may think fit including:-

(i) Setting up of hospitals or medical institutions and running them or granting of subscription and donations to hospitals, dispensaries, convalescent homes, asylums, nursing homes and other public institutions for administering medical relief of the needy.

(ii) Endowments to and help or support to hospitals, maternity homes, sanatorium and dispensaries.

(iii) Grant of medical help to the poor and grant of medical help to deserving persons during epidemic, famine, flood earthquake or any unforeseen calamity or war or warlike operations.



(i) Distribution of free food and clothing to the poor and needy.

(j) Setting up or helping by endowments or otherwise orphanages or poor houses for the benefit of orphans and/or other deserving Persons.

(k) Helping of poor widows, single parents and other handicapped.

(l) Establishing or rendering help to any institutions for the alleviation of human suffering.

(m) Making grants in cash or kind to institutions and organizations engaged in providing relief to people effected by natural calamities such as earthquake, floods and droughts.

(n) Promoting public morality and humanity, particularly by checking tendency of cruelty towards human and non-human living beings and encouraging compassionate feelings and kindness towards them by setting up and maintaining institutions for the purpose of helping those engaged therein.

(o) Promoting or conducting programs of social and economic development in rural or backward areas.

From the perusal of objects above, it is seen that the institution is working for multiple objectives. These multiple objectives are not educational.”

7. Thus, so far as getting claim of exemption from the income received is that the same should be existing solely for educational purposes and not for profit, other than those mentioned in Sub-clause (iiiab) and Sub-clause (iiiad). Sub-clause (iiiab) and Sub-clause (iiiad) of Section 10 (23C)(vi) are reproduced herebelow:



“(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed;”

8. The Authority has rejected the contention and claim of the petitioner-trust on the ground that as per the aims and objects of the trust, it is apparent that it has not only been formed for the purpose of advancing education, but is also for other purposes as mentioned in Clause 5(i) (j) (k) (l) (m) (n) (o) (**supra**).

9. In **New Nobles case (supra)**, three judges Bench of the Supreme Court considered at length the entire law relating to Section 10 (23 C) (vi) of the Act of 1961 and held as under:

“64. In the light of the above discussion, this Court is of the opinion that the interpretation adopted by the judgments in American Hotel as well as Queen’s Educational Society as to the meaning of the expression “Solely” are erroneous. The trust or education institution, which seeks approval or exemption, should solely be concerned with education, or education related activities. If, incidentally, while carrying on those



objections, the trust earns profits, it has to maintain separate books of account. It is only in those circumstances that “business” income can be permitted-provided, as stated earlier, that the activity is education, or relating to education. The judgment in American Hotel as well as Queen’s Educations Society do not state the correct law, and are accordingly overruled.”

It has also specifically held in paragraph No.54 as under:

“54. The expression “solely” is therefore important. Thus, in the opinion of this Court, a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education. Having regard to the plain and unambiguous terms or the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation.”

10. Again in **Union of India Vs. Baba Banda Singh Bahadur Education Trust** case(*supra*), the two judges Bench of the Apex Court, considered the aforesaid provision and observed as under:

“5. In the recent decision of this Court in the case of New Noble casing the 5. Educational Society (supra), it is specifically observed and held by the three-Judge Bench of this Court that for claiming the benefit/exemption under



Section 10(23C)(ii)(ab) which is para materia to Section 10(23C) (vi) the activity of the assessee must be solely for educational purposes and if ultimately it is found that the activity is for profits the assessee is not entitled to the exemption under Section 10(23C)(vi) of the Act.

6. Applying the law laid down by this Court in the case of New Noble Educational Society (supra) referred to hereinabove to the facts of the case on hand, the impugned judgment and order passed by the High Court is unsustainable. At this stage, it is required to be noted that taking into consideration the entire material on record, in fact, the Commissioner, while considering the application of the assessee for grant of exemption under Section 10(23C) (vi) specifically observed and held that the activity of the assessee cannot be said to be solely for imparting the education and that the assessee is indulging into the profit which was found to be 67.81% without depreciation and 44.48% with depreciation. The finding of fact recorded by the Commissioner, as such, not been upset by the High Court in the impugned judgment and order. iscatio ad m he nea cat &

In view of the above and for the reasons stated above, the present Appeal succeeds. The impugned judgment and order passed by the High Court deserves to be quashed and set aside and is, accordingly, quashed and set aside. The present Appeal is, accordingly, allowed. No costs”

11. Having noticed the law, the aims and objects of the petitioner-trust, we find that the findings arrived at by the Chief Commissioner of Income Tax in its impugned order dated 03.09.2013, do not warrant any



interference. The exemption was claimed by the trust itself and not by an individual educational institute namely, GHG academy.

12. In the light of the aforesaid facts and circumstances, it cannot be conclusively said that the trust was found and existed solely for advancing education purposes, hence, it was rightly not granted exemption. Accordingly, the present writ petition is hereby dismissed.

Pending civil miscellaneous application, if any, shall stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

29.07.2024
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Whether speaking/reasoned
Whether reportable?

Yes/No
Yes/No