

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1800 of 2012

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1. Bhupesh Kumar Sikshan Evam Vikas Sansthan, A Society Registered Under The Societies Act Having Its Office At Road No 13b, Rajendra Nagar, P.O. Rajendra Nagar, P.S. Kadamkuan, District Patna - 800016 Through Its Chairman Bhupesh Kumar Son Of Shri, S. N. Lal Resident Of Road No 13b, Rajendra Nagar, P.O. Rajendra Nagar, P.S. Kadamkuan, District Patna - 800016

.... Petitioner/s

Versus

1. Director General Of Income Tax (Inv.) Having Its Office At Central Revenue Building (3rd Floor) Birchand Patel Marg, Patna - 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy

For the Respondent/s : Mr. Harshwardhan Prasad

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

8 02-02-2015

Heard learned counsel for the petitioner and learned Sr. Counsel for the Income Tax Department.

Learned counsel for the petitioner is directed to implead the Commissioner of Income Tax (Exemption) Patna as respondent no. 2 to the writ application in the course of the day as it is informed by learned counsel for the Income Tax Department that the post of CIT (Exemption) has been created, who is now the competent authority in such matters.

The petitioner seeks quashing of the order dated 28.04.2011 by which approval for exemption under Section 10 (23C) (vi) of the Income Tax Act has been refused and directing the respondent to accord approval for exemption.

The facts of the case in brief are that the



petitioner claims to be running educational institution in the nature of a school from Class 1 to 8 and 11 to 12. It is not in dispute that a search was made in the school premises under Section 132 of the Income Tax Act and certain incriminating documents were seized. Admittedly, the petitioner itself approached the settlement commission in the matter and voluntarily disclosed unaccounted income of Rs. 4.00 crores over and above the income shown in the returns of Shri Bhupesh Kumar, Chairman of the Society and the returns of its concern. The disclosure pertains to the assessment years 2005-06 to 2010-11. Subsequently, the petitioner claims to have filed an application for exemption under Section 10 (23C) (iv) of the Act on 31.03.2010, for the society which is registered under Societies Registration Act, 1860 enclosing copies of accounts for the financial years 2006-07, 2007-08 and 2008-09 stating that till the financial year 2008-09 the receipt from school was below Rs. 1 crore but in view of the receipts for that year, it was expected that the receipt will exceed Rs. 1 crore and application for approval for the exemption under Section 10 (23C) (iv) was made. The Director General of Income Tax (Investigation) Patna directed the Assessing Officer to verify the facts and submit his report to the CIT (Central), Patna; both the Assessing Officer as well as the CIT (Central) did not recommend the application for grant of exemption for the



reason that the application was time barred and the books of accounts were not properly maintained. Considering the income of the society and discrepancies found, the Director General after providing sufficient opportunity to the petitioner to be heard directed the petitioner to submit documents including the audited books of accounts for the financial year 2009-10 pertaining to the assessment year 2010-11 but admittedly the audited account for the said year was not produced. After considering all aspects of the matter, the Director General accepting the recommendation of the Assessing Officer and the Commissioner of Income Tax (central), rejected the application for approval for exemption after treating the same as one under Section 10 (23C) (vi) and not under Sub-clause (iv) of the said section. So far as consideration of the matter as one for exemption under Section 10(23C) (vi) of the Act is concerned, learned counsel for the petitioner accepts that it has been rightly considered under said sub-clause (vi) and not sub-clause (iv).

Learned counsel for the petitioner has sought to assail the order of the Director General on various counts. It is firstly submitted by learned counsel that in terms of the 14th proviso to Section 10 (23C) (vi) of the Act, the application for grant of exemption for any particular financial year has to be made on or before 30th of September of the relevant assessment year from which the exemption is

sought and thus the order of the Commissioner apart from being factually incorrect by stating that the application made on 01.04.2010 is also legally wrong as the application was certainly not barred by limitation.

The said proviso of Section 10 (23C) is in the following terms :-

“Provided also that in case the fund or trust or institution or any university or other education institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st date of June 2006 for the purpose of grant of exemption or continuance thereof, such application shall be [made on or before the 30th day of September of the relevant assessment year from which the exemption is sought:]”

From a perusal of the aforesaid provision, it is evident that an application with respect to exemption from the particular assessment year has to be made on or before the 30th day of September of the said assessment year from which the exemption is sought and thus if the exemption has been sought from the assessment year 2010-11, as is evident from the application brought on the record, it could not be said to be time barred until 30th day of September as per the receipt. From the application, it is evident that it was filed on 31.03.2010 whereas even according to the impugned order the date of filing of the application was 01.04.2010. In



our view, the difference of one day or two day would make no difference so far as the applicability of the rule for filing the application is concerned and the application filed whether on 31.03.2010 or 1.04.2010 both would be well within the period of limitation prescribed for submitting the application. In this regard the order of the Director General does not appear to be correct.

However, the Director General has not stopped on the point of limitation only and considered the same on merits also. With regard to the merits of the matter, learned counsel for the petitioner submits that petitioner's application for the assessment year 2010-11 requires consideration and even assuming that audited account was not complete for the assessment year 2010-11, opportunity ought to have been granted but the same was not done and for the said reason impugned order is bad.

The aforesaid submission is not borne out from the impugned order as it is clearly stated therein that repeatedly opportunity was given to the petitioner to produce the books of account but the same were not produced. It was submitted before him that the books of account were not available and the search for the books was still going on. It was stated by the Chairman of the Society that the books of account were lying with the C.A. whereas the C.A. has categorically denied possession of the books of accounts.



The Director General accordingly observed that it is thus clear that either the books of account have not been maintained or these books are detrimental to the society and its office bearers and do not support the assessee's claim for exemption.

We are of the view that the said conclusion in the impugned order is unassailable. As a matter of fact, Form 66 paragraph -7 requires application to be made with copies of audited accounts and balance Sheet for the last three years alongwith affidavit reflecting the accounts and annual receipts of income.

Evidently, the application itself was filed without the audited accounts for the last three years. The provision of 30th day of September of the assessment year concerned as the cut-off-date for filing of the application has been clearly given so that the balance sheet and audited account of the said year could also be given. The petitioner not only failed to supply initially the audited accounts and balance-sheet for the financial year which pertained to the said assessment year but despite opportunities granted, the same was not produced nor the books of account were shown and thus rejection of the claim on the said ground cannot be said to be contrary to law.

Learned counsel for the petitioner also sought to assail the impugned order on the ground that the mere fact



that certain loose documents were found and an application was made regarding undisclosed income ought not to have led to rejection of its claim as they were educational receipts and merely non recording the same would not convert the character of the said receipts to undisclosed income.

In our view the said submission has no legs to stand in view of the fact that the petitioner had approached the Settlement Commission and showed his undisclosed income to the extent of Rs. 4 crores. In this connection it is submitted that the society is systematically generating huge surplus year after year and there is an institutional mechanism through which the society is perpetuating its profit motive every year. It is now well settled that if surplus is generated year after year, it cannot be said to be existing solely for educational purposes and in support of the said proposition learned counsel for the revenue has rightly relied on the decision of Uttarakhand High Court in the case of CIT Vs. Queens' Educational Society and St. Pauls Sr. Secondary School (2009) 319 ITR 160. The said decision has not been assailed by learned counsel for the petitioner.

Moreover in a writ jurisdiction this court is not really concerned with the final decision of the authority. Judicial review is concerned essentially with the process of decision making. We find that the Director General in his order has considered the material before him and given

reasoned finding.

In the aforesaid circumstances, we are not inclined to interfere with the impugned order. The writ application is accordingly dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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