**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH AT NAGPUR**

**INCOME TAX APPEAL NO.107/2013**

The Commissioner of Income Tax-I, Aayakar Bhawan, Civil Lines, Nagpur
..Versus..
Laxmibai Gangane Shikshan Prasarak Mandal, Akot

| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders |
| --- | --- |

**CORAM : B.P. DHARMADHIKARI & Z.A. HAQ, JJ.**
**DATE : 7.9.2015**

1. Heard Shri Anand Parchure, learned advocate assisted by Shri Bhushan Mohta learned advocate for the appellant and Shri L.S. Dewani, learned advocate for respondent no.1.

2. The department seeks to raise the following substantial questions of law :

> *(i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in ignoring the observations made by the Assessing Officer in his order relating to book entries and its improper reflection in the balance sheet and profit and loss account ?*
>
> *(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in*

> *misconstruing the law laid down by the Hon'ble Bombay High Court & ITAT in case involving allegedly similar set of facts ?*

3. The contention is, initially, in return filed for Assessment Year 2006 - 2007 a deficit of Rs.4,19,649/- was shown but after queries were raised under Section 143(2) the clarification was sought from Chartered Accountant and ultimately, a positive income was noticed. The Assessing Officer accordingly completed assessment under Section 143(3) read with Section 147 as also directed issuance of notice under Sections 274, 271 of Income Tax Act. The appeal preferred by assessee was rejected by the Commissioner of Income Tax. The perusal of appellate order shows that though the findings of Assessing Officer on non-availability of exemption under Section 10(23C) were not disturbed, a qauntum reduction was allowed. Assessee then approached Income Tax Appellate Tribunal and I.T.A.T. by impugned judgment dated 8$^{th}$ February, 2013 found assessee entitled to exemption.

Shri Parchure has taken us through details recorded in assessment order as upheld by C.I.T. He submits that on very same facts I.T.A.T. has, in paragraph 8, erroneously observed that the deficit of Rs.4,19,649/- in revised return was correct. He further contends that in this background, finding that assessee is entitled to exemption under Section 10(23C)(iiiab) of the Act is unsustainable as the Government Finance is not substantial and in any case the assessment order itself shows huge profits gained. Thus, assessee did not exist for educational purpose solely. He has drawn support from judgment of Uttarakhand High Court in the case of *Commissioner of Income Tax v/s. Queens' Educational Society* reported at **[2009] 319 ITR 160**.

4. Shri Dewani, learned counsel for assessee submits that I.T.A.T. has construed the documents available on record and noted that there was difference which was correctly shown in revised return and deficit was accordingly accepted by it. He further submits that Government Finance of Rs.93,71,174/- is about 70% of the total gross receipts and, therefore, substantial one. Profit generated are not shown to be used for any other purpose and hence the finding on exemption is liable to be maintained. He also points out that judgment of Uttarakhand High Court in the case of Income Tax v/s. Queens' Educational Society (mentioned supra) is overruled by Hon'ble Apex

Court on 16th March, 2015.

5. It is apparent that if exemption under Section 10(23C) is held admissible to assessee, factual background need not be gone into. The finding by I.T.A.T. that the Government Grants constituted about 70% of the total grant receipts is not urged to be perverse. The I.T.A.T. in impugned order has relied upon a decision by its Indore Bench where 75% of Government Aid was found substantial. It has also mentioned a judgment delivered by Karnataka High Court where extent of Government Grant was about 36.42%.

6. In the case relied upon by Advocate Parchure and later on looked into by Hon'ble Apex Court, assessees were Educational Societies registered under the Societies Registration Act imparting education to the children. Their account revealed profits, which were then invested in fixed assets including completing building and a net surplus after investment, they had claimed exemption. The Assessing Officer rejected it and assessees' appeals were allowed by Commissioner. The said adjudication was maintained by I.T.A.T. The Hon'ble High Court held that assessees were not entitled to exemption.

The Hon'ble Apex Court has, in this background, considered the legal position from paragraph 22 onwards. It shows test to be applied is predominant nature of activities.

7. Here it is not shown that predominant nature of activities of assessee were not educational and the said nature or its predominance is not in dispute. Only because profits have been found in assessment order, the contention that assessee is not entitled to exemption has been raised.

8. In the light of law as noted, we find the contention to be erroneous.

9. In the result, no substantial question of law arises. Appeal is, therefore, rejected. No costs.

**<u>JUDGE</u>** **<u>JUDGE</u>**

Tambaskar.