

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.16248 of 2012(O&M)

Date of decision:30.06.2015

MDN Education Society

.....Petitioner

Versus

Union of India & others

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Kulvir Narwal, Advocate, for the petitioner.

Ms.Urvashi Dhugga, Advocate, for the respondents.

G.S.Sandhawalia J.

1. Challenge in the present writ petition is to the order dated 25.03.2011 (Annexure P5), passed by the Chief Commissioner of Income Tax, Haryana-respondent No.2, whereby the application of the petitioner for the assessment year 2010-11, for grant of exemption under Section 10(23C) of the Income Tax Act, 1961 (for short, the 'Act') has been rejected. The application for rectification claiming depreciation was also rejected vide order dated 01.06.2011 (Annexure P7).

2. The pleaded case of the petitioner is that it is duly registered with the Registrar of Firms & Societies, Haryana and running a educational institution, solely for the purpose of imparting education and not for the purpose of earning profit. Vide order dated 26.03.2008 (Annexure P1), approval was granted under Sub-clause (vi) of Clause (23C) of Section 10 of the Act, for the assessment years 2007-08 to 2009-10, subject to certain conditions. An application was, thereafter, filed along with Form 56 D and the relevant documents, regarding the registration certificate along with

memorandum of society, details of governing body of society and a copy of the audited balance sheet for continuation of the exemption. The case of the petitioner had been recommended by the Commissioner of Income Tax, Rohtak on a report sought and on 13.01.2011, show cause notice was issued to explain as to how the petitioner-Society was eligible for exemption and in reply, the application had been duly filed on 15.02.2011, explaining the queries.

3. Respondent No.2 rejected the application vide order dated 25.03.2011 (Annexure P5) by placing reliance upon the judgment of the Apex Court in **P.A.Inamdar & others Vs. State of Maharashtra & others (2005) 6 SCC 537**. Thereafter, an application had been filed under Section 154 of the Act that an addition had been made to the income and expenditure, which was not sustainable and had been wrongly rejected.

4. Counsel for the petitioner has placed reliance upon circular No.7/2010 dated 27.10.2010 (Annexure P8), to submit that it is not necessary to seek further approval after the same had been granted initially on 26.03.2008. It is submitted that any approval made after 13.07.2006 would be valid until it is withdrawn and there was no requirement for renewal of the same, after a period of 3 years. Reference is also made to Rule 2CA, which came into effect on 01.12.2006 and it is submitted that once the approval had been granted, it could be withdrawn only on the ground provided. Reliance has been placed upon the Division Bench judgment of the Allahabad High Court in **Sunbeam Academy Educational Society Vs. Chief Commissioner of Income Tax & others (2014) 365 ITR 0378** wherein a similar view has been taken that there was no requirement to apply afresh after 13.07.2006 and the original order of approval would

continue to remain in force. The authorities were, however, given liberty to proceed under the provisos where they felt that the income was not applied in accordance with the same.

5. After hearing counsel for the parties, we are of the opinion that the matter is squarely covered against the Revenue. There is no denying the fact that exemption had already been granted to the petitioner earlier, vide order dated 26.03.2008, for a period of 3 years till the year 2009-10. The application was made on 29.03.2010, for continuation and in pursuance of the same, a show cause notice was issued to the applicant on 13.01.2011 to substantiate its claim. In view of the circular No.7 dated 27.10.2010 (Annexure P8), the petitioner was not required to file an application for extension, as has been held in the case of **Sunbeam Academy Educational Society** (supra). Relevant observations read as under:

“9. The aforesaid proviso was in relation to clause (iv) and (v) of Section 10 (23C) of the Act. The CBDT by its circular No.7 of 2010 has clearly held that it would also be applicable for approval granted under clause (vi) and (via) of the Act, namely, that the approval can be withdrawn by the competent authority on certain conditions being satisfied and after giving a reasonable opportunity of show cause to the assessee.

10. In the light of the aforesaid, the application dated 25.3.2008 filed by the petitioner for extension of the approval under Section 10(23C)(vi) of the Act for the assessment years 2008-09, 2009-10 and 2010-11 was a redundant application, inasmuch as, there was no requirement to apply for extension of the approval inasmuch as the approval in the case of the petitioner was granted after 1.12.2006 on 20.12.2007. The approval so granted by the Chief Commissioner of Income Tax, by an order dated 20.12.2007, was a one time affair, which was to continue till it was withdrawn under the proviso as extracted above. Consequently, the impugned order dated 17.3.2009 was

otiose having no effect in law. The impugned order only rejects the application for extension of the approval for the assessment years 2008-09, 2009-10 and 2010-11. The original order of approval dated 20.12.2007 still continues to remain in force inspite of the rejection of the petitioner's application by the impugned order dated 17.3.2009.

11. In the light of the circular dated 27.10.2010 issued by the CBDT, the approval granted by the Chief Commissioner of Income Tax dated 20.12.2007 being a one time affair continues to remain in force till it is withdrawn under the proviso as extracted aforesaid. Similar view was held by a Division Bench of the Lucknow Bench of this High Court in State Innovations in Family Planning Services Project Agency vs. Union of India and others, Writ Petition No.6715 (M/B) of 2013, decided on 4.9.2013.

12. In the light of the aforesaid, the impugned order passed by the Chief Commissioner of Income Tax is quashed. The writ petition is allowed.

13. It is hereby clarified, that it would be open to the authorities to proceed, if they are so advised against the petitioner under the proviso as extracted aforesaid.”

6. We are further fortified by the fact that the judgment of a Division Bench of this Court in *Pinegrove International Charitable Trust Vs. Union of India (UOI) & others (2010) 327 ITR (P&H)* has been upheld by the Apex Court in *Queen's Educational Society Vs. CIT (2015) 372 ITR 699*, wherein it has been specifically noticed that in view of the 13th Proviso, after giving reasonable opportunity, the earlier approval could be withdrawn if the activities are found not to be genuine and not according to the conditions and the approval could be subject to monitoring. Relevant observation reads as under:

“25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief

CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act.

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33. Having analysed the provisos to Section 10(23-C)(vi) one finds that there is a difference between stipulation of conditions and compliance therewith. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardised form in terms of the first proviso. It is only if the prerequisite condition of actual existence of the educational institution is fulfilled that the question of compliance with requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso

contains monitoring conditions/requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval.

34. To make the section with the proviso workable we are of the view that the monitoring conditions in the third proviso like application/utilisation of income, pattern of investments to be made, etc. could be stipulated as conditions by the PA subject to which approval could be granted. For example, in marginal cases like the present case, where appellant-Institute was given exemption up to financial year ending 31.3.1998 (assessment year 1998-99) and where an application is made on 7.4.1999, within seven days of the new dispensation coming into force, the PA can grant approval subject to such terms and conditions as it deems fit provided they are not in conflict with the provisions of the 1961 Act (including the abovementioned monitoring conditions). While imposing stipulations subject to which approval is granted, the PA may insist on certain percentage of accounting Income to be utilized/applied for imparting education in India. While making such stipulations, the PA has to examine the activities in India which the applicant has undertaken in its Constitution, MoUs. and Agreement with Government of India/National Council. In this case, broadly the activities undertaken by the appellant are - conducting classical education by providing course materials, designing courses, conducting exams, granting diplomas, supervising exams, all under the terms of an Agreement entered into with Institutions of the Government of India. Similarly, the PA may grant approvals on such terms and conditions as it deems fit in case where the Institute applies for initial approval for the first time. The PA must give an opportunity to the applicant-institute to comply with the monitoring conditions which have been stipulated for the first time by the third proviso. Therefore, cases where earlier the applicant has obtained exemption(s), as in this case, need not be re-opened on the ground that the third proviso has not been complied with. However, after grant of approval, if it is brought to the notice of the PA that conditions on which

approval was given are breached or that circumstances mentioned in the thirteenth proviso exists then the PA can withdraw the approval earlier given by following the procedure mentioned in that proviso. The view we have taken, namely, that the PA can stipulate conditions subject to which approval may be granted finds support from sub-clause (ii)(B) in the thirteenth proviso.”

7. Another aspect from which we find that the impugned order was not justified is that respondent No.2 has placed reliance upon the observations of the Apex Court in the case of **P.A.Inamdar** (supra), which had been sought to be distinguished by the petitioner on the ground that the judgment was not pertaining to the provisions under the Act relating to Section 10(23C). This Court in **Sanatan Dharam Shiksha Samiti Vs. Chief Commissioner of Income Tax, Panchkula 2011 (10) TMI 287**, has also held that the said judgment would not be applicable and the principles laid down therein could not have been implied by respondent No.2 and the judgment in the case of **Pinegrove International Charitable Trust** (supra) was binding upon the authorities. Relevant observations read as under:

“The observations of respondent whereby it has sought to decline the case of the petitioner for the assessment year 2009-10 by placing reliance upon the judgment of the Hon'ble Supreme Court in P.A.Inamdar's case (supra) would be of no help since the issue in the said case was not the issue under the Income Tax Act. The Hon'ble Supreme Court was only deciding the question of minority and non minority institutions, percentage of reservation/control over the said institutions, fixation of quota of admissions in respect of unaided institutions and fee structure etc. Therefore, the reasoning given by respondent is totally perverse and not sustainable. The respondent has only relied upon few observations made regarding fixation of fee while losing sight of the fact that what was the main issue that was being decided. The issue having been directly decided by the

Division Bench of this Court, is binding upon the respondent.”

8. Accordingly, we are of the view that the said order dated 25.03.2011 is not sustainable and is, accordingly, quashed. However, as noticed, it would be open to the authorities to issue show cause notice and proceed as per the 13th Proviso, if so advised. Resultantly, the order dated 01.06.2011 (Annexure P7) is also quashed. Authorities shall reconsider the application filed under Section 154 of the Act, in view of the fact that the order dated 25.03.2011 (Annexure P5) has been set aside.

9. The present writ petition is, accordingly, allowed in the aforesaid terms.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
JUDGE

30.06.2015
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