

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

**CWP No. 24895 of 2014
Reserved on:- 07.05.2015
Date of Decision:- 06.07.2015**

M/s. Harf Charitable Trust (Regd.), MalerkotlaAppellant(s)

vs.

The Chief Commissioner of Income Tax, Ludhiana and another
.....Respondent(s)

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

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Sanjay Bansal, Sr. Advocate,
with Mr. B.M. Monga, Advocate,
and Mr. Yash Paul Goyal, Advocate,
for the petitioner.

Ms. Savita Saxena, Advocate,
for the respondents.

G.S. SANDHAWALIA, J.

Challenge in the present writ petition is to the order dated 17.09.2012 (Annexure P-5) passed by the Chief Commissioner of Income Tax-respondent no. 1 wherein, the application of the petitioner for grant of approval for exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 (in short 'the Act') has been rejected.

The predominant reason which weighed with respondent no. 1- The Chief Commissioner of Income Tax, Ludhiana was that the petitioner-Trust had an intention to carry out business activity which was not permissible for charitable organizations. The trustees were in place for the whole duration of their life and it gave the organization a look and character of a private body rather than a charitable organization and the objectives were not related to the promotion of education and the educational trust did

not exist solely for educational purposes.

The petitioner's case is that the Trust is registered under the Societies Registration Act, 1860 and is a public charitable trust and running a school in the name of Sohrab Public School, Nabha Raod, Malerkotla solely for educational purposes and is being regularly assessed to income tax. An application was submitted in Form 56D under Section 10(23C)(vi) of the Act read with Rule 2CA seeking exemption from payment of income tax as per requirements and it also filed the audited balance sheets for the last 3 years plus the trust deed. Certain information was asked for and a detailed reply was filed clarifying each and every issue and an opportunity of hearing was afforded by respondent no. 1, who rejected the claim on untenable grounds.

In the written statement filed on behalf of the respondents, plea taken was that the education institution is to exist “solely for educational purposes” and if the institution existed for other purposes, the exemption could not be granted and reliance was placed upon the provisions of Section 10(23C)(vi) of the Act and the observations made by the Division Bench of this Court in ***Pine Grove International Charitable Trust vs. Union of India and others, (2010) 327 ITR 73 (P & H)***. The said order was accordingly justified that even if one of the objects enables the institute to undertake commercial activities, entitlement for approval under the provisions of the Act would not be there.

The petitioner-Trust also filed replication that a supplementary trust deed had been executed and the objecting words “and any other business as decided by the trustees” had been deleted. The said fact had also been noticed in a subsequent assessment made on 21.12.2012

(Annexure P-9).

Counsel for the petitioner has thus submitted that merely because there was a clause in the trust deed which provided that the Trust could carry on other business would not mean that there was an absolute bar for consideration of the benefit under Section 10(23C)(vi) of the Act once the predominant purpose and objects of the trust were charitable in nature. It is accordingly submitted that in view of the observations of the Division Bench in *Pine Grove's case (supra)*, which had been further upheld by the Apex Court in ***Queen's Educational Society vs. CIT, (2015) 372 ITR 699***, the respondent no. 1 was not justified in rejecting the case.

Counsel for the Department, on the other hand, contended that the order was justified and within the ambit of the provisions of the Act and once the Trust was having other objectives which were not related to the charitable purposes, no fault could be found in the decision of respondent no. 1. The objectionable clause which was part of the trust deed was clause (i) which provided that one of the objects of the trust was “to carry on other business as decided by the trustees”. On the strength of the said clause, as noticed above, the impugned order has been passed against the petitioner-trust on the strength of the provisions that the trust did not exist solely for educational purposes.

To appreciate the controversy in question, it would be necessary to examine the provisions of Section 10(23C)(vi) of the Act which provides that in computing the total income of the previous year of any person, income falling within any of the specified clauses is not to be included which is received on behalf of any educational institution existing solely for educational purposes and not for purposes of profit than those

mentioned in sub-clause (iiiab) or sub-clause (iiiad) of Section 10(23C) of the Act. The relevant provisions read thus:-

“10. *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-*

xxx

xxx

xxx

(23C) *any income received by any person on behalf of-*

xxx

xxx

xxx

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

xxx

xxx

xxx

(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; or*

xxx

xxx

xxx

(vi) *any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in subclause(iiiab) of sub-clause(iiiad) and which may be approved by the prescribed authority; ”*

The said provisions were discussed in a threadbare manner by the Division Bench of this Court in *Pine Grove's case (supra)* wherein, exemption granted had been withdrawn on the ground that the educational institutions being run were for generating profits and did not exist solely for educational purpose. While issuing show cause notice, the authorities had placed reliance upon the judgment of the Uttarakhand High Court in *CIT vs.*

Queen's Educational Society, (2009) 318 ITR 160. The Division Bench framed the following substantial questions of law:-

“(A) *Whether an educational institution would cease to exist 'solely' for educational purposes and not for purposes of profit merely because it has generated surplus income over a period of 4/5 years after meeting its expenditure?*

(B) *Whether the amount spent on acquiring/constructing capital assets wholly and exclusively becomes part of the total income or it becomes entitled to exemption under Section 10(23C)(vi) of the Act?*

(C) *Whether an institution registered as a Society under the Societies Registration Act, 1860, loses its character as an educational institution, eligible to apply for exemption under Section 10(23C)(vi) of the Act?”*

Question no. (A) as to whether the education institution cease to exist solely for educational purposes was answered in favour of the institutions by holding that the predominant object of the activity is to be taken into consideration. Reliance was placed upon the judgments of the Apex Court in ***Aditanar Educational Institution vs. Additional Commissioner of Income Tax, 1997 (224) ITR 310; American Hotel and Lodging Association Educational Institute v. CBDT, (2008) 301 ITR 86; CIT (Addl.) vs. Surat Art Silk Cloth Manufacturers Association, 1980 (121) ITR 1 (SC)*** and the view in *Queen's Educational Society's case (supra)* was specifically not accepted. It was held that where the educational institutions which are registered, the society would retain their character as such and they would be eligible to apply for exemption. The relevant observations read thus:-

“(1) It is obligatory on the part of the Chief Commissioner of Income Tax or the Director, which are the prescribed authorities, to comply with proviso thirteen (un-numbered). Accordingly, it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.

*(2) The provisions of Section 10(23C)(vi) of the Act are analogues to the erstwhile Section 10(22) of the Act, as has been laid down by Hon’ble the Supreme Court in the case of **American Hotel and Lodging Association (supra)**. To decide the entitlement of an institution for exemption under Section 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit [See 5-Judges Constitution Bench judgment in the case of *Surat Art Silk Cloth Manufacturers Association (supra)*]. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by Hon’ble the Supreme Court in para 33 of its judgment in **American Hotel and Lodging Association’s case (supra)**. Thus, on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deems fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15% and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement.*

Thereafter the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessments are complete with the finding that there is no contravention of the statutory provisions, need not be reopened. However, after grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exists, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

(3) The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.

(4) The educational institutions, which are registered as a Society, would continue to retain their character as such and would be eligible to apply for exemption under Section 10(23C)(vi) of the Act. [See para 8.7 of the judgment – Aditanar Educational Institution case (supra)].

Accordingly, the orders passed withdrawing the exemptions were quashed with liberty to pass fresh orders.

The said view has been specifically approved by the Apex Court in *Queen's Educational Society's case (supra)* and the judgment of the Uttarakhand High Court has been reversed.

The Apex Court has accordingly discussed the predominant objects of the educational institution and whether it exists solely for educational purposes and not for the purposes of profit. Accordingly, conclusion was arrived at that merely because some profit arises from the activity which was the predominant object, it would not mean that the

charitable character of the purpose of setting of the institution would be lost.

The predominant object test was to applied which was the promotion of education and the principles were laid down as under:-

“(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

(3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.”

It is also pertinent to note that while relying upon the earlier judgments of the Apex Court namely *American Hotel and Lodging Association (supra)* and keeping in view the provisos of the sections in mind especially 13th proviso which provided that after giving a reasonable opportunity, the approval granted to the trust could be withdrawn if it is found that the activities are not genuine or in accordance with any of the conditions, there could be a conditional approval subject to the monitoring.

The relevant observations read thus:-

“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.”

In the present case, under the second proviso, the authority was to call for documents including audited annual accounts from the trust and in order to satisfy itself about the genuineness of the activities of the trust, the inquiries had to be made. The objects of the petitioner-trust read thus:-

“2. OBJECTS OF THE TRUST

(a) To spread education and for achieving the said object to establish, maintain, run, develop and improve, extend, grant donations in cash and kind and assist in the establishment, running, development, improvement and extension of schools, colleges, workshop, industrial and technical schools, institutions for the promotion of agriculture, hostels for the benefit of needy students, maintain agriculture farms for the benefit of the poor.

(b) To establish, maintain or acquire library or libraries for the benefit of the students community.

(c) To institute and award scholarships in India for the study, research and apprenticeship for all or any of the aforesaid educational purpose.

(d) To establish, maintain, run, develop, improve, extend, grant donations for and to aid and assist in the establishment maintenance, running, development, improvement and extension of hospitals, clinics, XRay plants, dispensaries, maternity houses, recreating centres and all similar institutions as will afford treatment to alleviate human sufferings.

(e) To conduct feeding to poor generally give food and raiment to the poor, needy and disabled persons and to afford relief to people in distress due to natural calamities, accident, earthquake, flood, famine,. Epidemic orphanages and welfare institutions.

(f) To carry on community development programmes for the upliftment of the economically

weaker sections of the society and construct and develop community centres or halls for carrying on such activities.

(g) To provide food, shelter, clothing, medical care and education for the needy.

(h) To provide assistant to best players and also to promote various sports by organizing tournaments in the interest of the Public.

(i) To carry out other business as decided by the Trustees.”

It is not disputed that the school as such is also affiliated with the Central Board of Secondary Education, New Delhi and has also been granted registration under Section 12-A w.e.f. 15.07.1997. Merely because one of the clauses of the trust deed provided that the trust would carry on other business as decided by the trustees would not per se dis-entitle it from being considered for registration under Section 10(23C)(vi) of the Act. The reasoning that the Trust had intentions to carry out the business and the said institute was not existing solely for educational purposes would amount to giving a very narrow meaning to the section and the predominant object test was to be applied. As noticed above, it was not that respondent no. 1 came to the conclusion that the Trust was doing some other business and the said business was generating substantial amounts which would over ride the main objects of the trust which have been reproduced above which pertain mainly to the cause of education. Keeping in view the principles which have been discussed regarding the words 'solely for educational purposes and of generating profit', we are of the opinion that in the absence of any such finding that the trust was doing business, the application could not have been rejected only on this ground that one of the clauses in the objects provided such right to the trust. The prescribed authority could have made

it conditional by holding that if any such business is carried out, the registration granted is liable to be cancelled. The principles laid down by the Apex Court in *American Hotel and Lodging Association's case (supra)* can thus be also applied in the circumstances. The said principles read thus:-

“33. Having analysed the provisos to Section 10 (23C)(vi) one finds that there is a difference between stipulation of conditions and compliance thereof. 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 standardized form in terms of the first proviso. It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance of 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/utilization 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.”

Accordingly, we are of the view that the impugned order cannot be justified solely on the ground that in view of a clause which provided that the Trust could run a business, it would be debarred as such from registration on the ground that it was not existing solely for educational purposes. That merely a conferment of power to do business would not debar the right for consideration to the trust without any finding being recorded that the predominant object of the Trust was to do business. Thus, respondent no. 1 misdirected itself by rejecting the application on this ground without coming to any conclusion that the trust was carrying on any other activity as per clause (i). It is also a matter of fact, as noticed, now that the trust has already also deleted the objectionable clause and which has also been noticed in the subsequent assessment made in the assessment order dated 21.12.2012 for the year 2010-11.

Accordingly, the writ petition is allowed and the impugned order dated 17.09.2012 (Annexure P-5) is quashed. The competent authority shall decide the said application afresh keeping in view the observations made hereinabove.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

06.07.2015

shivani

