IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.747 of 2013 (O&M)
Date of decision:25.03.2015

Vivek Shiksha Samiti

....Petitioner

Versus

Chief Commissioner of Income Tax, Panchkula

......Respondent

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

Present: Mr.Sandeep Goyal, Advocate, for the petitioner.

Ms.Urvashi Dhugga, Advocate, for the respondent.

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S.J.Vazifdar, Acting Chief Justice (Oral):

1. Rule. Rule returnable and heard finally.

2. The petitioner has challenged the order dated 24.09.2012 (Annexure P5), passed by the Chief Commissioner of Income Tax, Panchkula, rejecting its application for exemption, filed under Section 10(23C)(vi) of the Income Tax Act, 1961.

3. The impugned order observes that after debiting the depreciation etc., the profit margin is 25.05%, which is higher than the limit of 15%, under the said provision. However, as rightly argued on behalf of the respondent, the order does not state that this is for more than 5 years. Disallowance can only be if this position continues for a period of more than 5 years. The order is also passed *inter alia* on the ground that the petitioner did not produce certain documents such as vouchers.

4. Mr.Goyal, learned counsel for the petitioner states that vide the notice dated 25/29.03.2012 (Annexure P3), the respondent called upon the

petitioner to furnish certain documents. The same were furnished, as is evident from the petitioner's letter (Annexure P4). The petitioner's grievance is that the impugned order should not have been passed due to the non-compliance of the said notice dated 25/29.03.2012. Further, the respondent did not, upon receipt of the reply, allege that the particulars have not been furnished.

5. It is not necessary to go into this aspect in any further detail. There appears to have been some communication gap in this regard. The ends of justice would be served by granting the petitioner, an opportunity of producing the documents required by the respondent.

6. In these circumstances, the impugned order dated 24.09.2012 (Annexure P5) is set aside and the matter is remanded for a fresh decision, after giving the petitioner an opportunity of producing any document(s) that the respondent may require. We are informed that the matter will, now, be decided by the Commissioner of Income Tax (Exemption), Chandigarh. The matter shall be decided, in accordance with law, including on the basis of the judgment passed by the Supreme Court in **CA No.5167 of 2008** titled *M/s Queen's Educational Society Vs. Commissioner of Income Tax,* decided on 16.03.2015.

Writ petition is, accordingly, disposed of.

(S.J.Vazifdar)
Acting Chief Justice

25.03.2015
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(G.S.Sandhawalia)
Judge