

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.6714 of 2014

Date of decision: 25.03.2015

Sanatan Dharam Shiksha Samiti

....Petitioner

Versus

Chief Commissioner of Income Tax, Panchkula

.....Respondent

CWP No.6833 of 2014

Sanatan Dharam 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.

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

1. Rule. Rule returnable and heard finally.
2. The petitioner has challenged the order dated 11.11.2013 (Annexure P21), passed by the Chief Commissioner of Income Tax, Panchkula (for short, the 'CCIT'), rejecting its application for exemption/approval, filed under Section 10(23C)(vi) of the Income Tax Act, 1961 (for short, the 'Act') for the assessment years 2005-06 to 2008-09.
3. The petitioner has sought the said exemption by filing application dated 31.03.2008 (Annexure P4), which was rejected vide the impugned order.

Sabha Maharana Partap Bhawan, Kurukshetra Vs. Union of India & another, decided on 29.01.2010 and the Division Bench of this Court *inter alia* held that earning profits is not a deciding factor to conclude that an educational institution exists for profit. The Division Bench further held that where more than 15% of the income of the educational institution is accumulated on or after 01.04.2002, the period of accumulation of amount exceeding 15% is not permissible beyond 5 years, provided the excess income has been applied or accumulated for exemption, wholly or exclusively, for the purpose of education. It was further held that on an application, the authority could grant approval, subject to such terms and conditions as it may deem fit, provided that they are not in conflict of the Act and that the parameters of earning profits beyond 15% and its investment is wholly for the purpose, as may be expressly stipulated, as per the statutory requirement.

4. Considering the order that we intend passing, it is not necessary to refer to the judgment in any detail. Suffice it to note that the Division Bench ultimately allowed the writ petitions, set aside the impugned orders and directed the CCIT to decide the same, afresh, after considering every case independently, but in the light of the judgment.

5. The petitioner's case, however, was decided on remand. On the other hand, in the meantime, the assessment orders were completed on the basis that no exemption had been obtained under Section 10(23C)(vi) of the Act. The petitioner has challenged these orders. The CCIT has held against the petitioner. The appeals against the order of the CCIT are pending in this Court. We are informed that in those appeals, a Division Bench of this Court has passed an interim order, directing the CCIT to decide the applications, in accordance with the judgment passed by the Division Bench in CWP No.858 of 2009 on

6. Thereafter, the impugned order was passed by the CCIT. After setting out the facts, the CCIT furnished the reasons for rejecting the application. All the paragraphs except paragraph No.7 are almost identical to the order dated 23.03.2009 (Annexure P14), which had been set aside by the Division Bench vide judgment dated 29.01.2010. It does not appear to be a fresh consideration of the matter in its entirety. The impugned order concludes with paragraph No.7. It is important to note that in paragraph No.7, it has been specifically stated that in a short span of time, no discrete enquiry could be made. It is also pertinent to note that for the subsequent years, the exemption has been granted. The impugned order, therefore, has in fact, not complied with the order dated 29.01.2010, in its correct perspective. It was for the CCIT to go into the matter afresh and then pass an order.

7. One of the contentions raised by Ms.Dhugga, learned counsel appearing for the respondent, is that the issue of limitation, as regards the applications for assessment years 2005-06 to 2007-08 were correctly decided vide the original order dated 23.03.2009 and therefore, that issue stands concluded.

8. The submission is not well founded. Whether the issue was correctly decided or not, is not relevant at this stage. The fact is that the order dated 23.03.2009 was set aside by the Division Bench vide order dated 29.01.2010, in its entirety. It is necessary, therefore, for the CCIT to decide the matter afresh including on the question of limitation.

9. In the circumstances, the impugned order dated 11.11.2013 (Annexure P21) is set aside. We are informed that the matter is, now, to be decided by the Commissioner of Income Tax (Exemption), Chandigarh. Accordingly, the Commissioner of Income Tax (Exemption), Chandigarh shall

reiterate that all the issues including the issue of limitation shall be decided after keeping in mind the principles laid down by the Apex Court in **CA No.5167 of 2008** titled *M/s Queen's Educational Society Vs. Commissioner of Income Tax*, decided on 16.03.2015.

The writ petitions are, accordingly, disposed of.

(S.J.Vazifdar)
Acting Chief Justice

25.03.2015
sailesh

(G.S.Sandhawalia)
Judge