

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 13.08.2015

+ W.P.(C) 2186/2014 and CM No. 4561/2015

**AMERICAN SCHOOL OF BOMBAY EDUCATION TRUST
(THROUGH ITS TRUSTEES) & ORS. Petitioners**

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Porus Kaka, Sr Advocate with Mr Divyesh Chawala, Mr Jay Savla, Mr Jas Sanghavi, Ms Ankita Jain and Mr Rajpal Singh

For the Respondent No. 1 : Ms Niti Jain for Mr Anuj Aggarwal

For the Respondent Nos.2 to 5 : Mr Rohit Madan with Mr Amol Sinha, Mr Zoheb Hussain and Mr Akash Vajpai

**CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 29.10.2013 passed by the Central Board of Direct Taxes on an application for grant of approval for exemption under Section 10 (23C)(vi) of the Income-tax Act, 1961 (hereinafter referred to as the said Act) for assessment years 1999-2000, 2000-01 and 2001-02. By virtue of the impugned order dated 29.10.2013,

the application of the petitioner has been rejected.

2. This case has had a long history. We need not go into all the details. Only a few facts are necessary. First, the assessments for the years in question had been completed but have been set aside by the Income Tax Appellate Tribunal and have been restored to the file of the Assessing Officer for *de novo* assessment after the decision of the CBDT on the application for exemption. Second, on an earlier occasion the CBDT had rejected the application for grant of approval and the petitioner had approached this court by way of a writ petition which was decided on 20.01.2011. In that order it was specifically indicated that the order dated 07.06.2011 passed by the CBDT is set aside and the question of approval was to be re-examined by the CBDT in the light of the Supreme Court decision in the case of **American Hotel and Lodging Association Educational Institution v. CBDT: 301 ITR 86 (SC)**. The said decision of the Supreme Court has been relied upon by another Division Bench of this court in **Digember Jain Society For Child Welfare v. Director General of Income-Tax (Exemptions): 329 ITR 459 (Delhi)**, where it has been held that by virtue of the Supreme Court decision in **American Hotel and Lodging Association** (*Supra*) it has been clarified that the amended

provisions of Section 10(23C)(vi) are analogous to Section 10(22). It has also been indicated by the Division Bench that when an application for exemption is moved by any trust, fund, university or other educational institutions, the threshold conditions which are to be examined at the stage of grant or rejection of exemption are (i) actual existence of an educational institution and (ii) approval of the prescribed authority for the purposes of grant of exemption for which the applicant has to move an application in the standardized form in terms of the first proviso to Section 10(23C)(vi). The Division Bench also clarified after interpreting the Supreme Court decision in **American Hotel and Lodging Association** (*Supra*) that insofar as the third proviso is concerned, the same relates to application of funds and that would be a matter which would arise for consideration at a later stage. In other words, the third proviso prescribes a monitoring condition rather than a condition for grant of or rejection of approval. The Division Bench further clarified that it is only in the event that the conditions stipulated in the third proviso are not fulfilled, after the grant of exemption, that the prescribed authority is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein.

There is also a recent decision of the Supreme Court in the case of M/s Queen's Educational Society v. Commissioner of Income Tax which also reiterates the propositions settled in **American Hotel and Lodging Association** (*Supra*).

3. Third, we may also take note of the fact that despite the setting aside of the assessment orders as noted above by the Income Tax Appellate Tribunal, the Assessing Officer, without waiting for the decision of the CBDT, passed fresh assessment orders which ultimately were set aside by the Bombay High Court by an order dated 12.11.2013. In the course of those proceedings the Bombay High Court had given specific directions that the CBDT should decide the issue of grant of approval under Section 10(23C)(vi) without being influenced by the assessment orders.

4. We have heard the learned counsel for the parties. On going through the impugned order, we find that the CBDT has not paid heed to the directions given by this court as well as by the Bombay High Court. If one were to look at the contents of paragraph 13, it would immediately become apparent that the CBDT has been clearly influenced by the findings of the Assessing Officer in the assessment orders for the assessment years 1999-2000 to 2001-02. Those assessment orders have been set aside and have

been restored to the file of the Assessing Officer as we have already indicated above. This fact is also noted by the CBDT in the following manner:-

“The mere fact that the said three assessment orders have been restored back to the file of the AO by the ITAT, Mumbai on a technical ground, with the direction to decide the issue *de novo* after disposal of the assessee’s application seeking exemption under Section 10(23C)(vi) by the CBDT does not in any manner nullify the findings of the Assessing Officer for the given three assessment years based on the accounts of the assessee.”

We are unable to understand as to how could the CBDT have made such a remark that even though the assessment orders had been set aside the findings would still hold good. Be that as it may, the fact remains that the CBDT has looked at the assessment orders while examining the application for grant of approval which was prohibited by the Bombay High Court by virtue of its directions given in the writ petition which the petitioner had filed before the said court.

5. Apart from this, we also find that the direction given by this court has not been followed by the CBDT in the sense that it has not decided the case in terms of the decision of the Supreme Court in **American Hotel and Lodging Association** (*Supra*). That decision is clear and has also been applied by this court in **Digember Jain Society** (*Supra*). Yet the CBDT has

taken a view that the decision of the Supreme Court in **American Hotel and Lodging Association** (*Supra*) was rendered on its peculiar facts and did not lay down any general principles of law or procedure. Once again, we are unable to understand as to how the CBDT could have even made such a remark when this court had directed that the decision of the Supreme Court in **American Hotel and Lodging Association** (*Supra*) would have to be taken into account while deciding the application. There are several other lacunae in the impugned order which we need not advert to. The errors mentioned above are sufficient for us to conclude that the impugned order deserves to be set aside. It is set aside.

6. The only question that survives before us is whether we remit the matter to the CBDT once again for it to decide the question of approval or on the basis of available material, we direct the CBDT to grant the approval. We have noted that in **Digember Jain Society** (*Supra*) this court had in fact issued a mandamus directing the revenue to grant exemption to the petitioner therein under Section 10(23C)(vi) of the said Act. The court, while doing so, also directed that the concerned authority would be free to incorporate stipulations and conditions in terms of the third proviso. We find that it is an admitted fact in the present case that the petitioner exists solely for

educational purposes and not for the purposes of profit. These are the only requirements for grant of approval and, therefore, in the same manner as in the case of **Digember Jain Society** (*Supra*) we issue a writ of mandamus directing the respondents to grant approval to the petitioner under Section 10(23C)(vi) of the said Act for the Assessment years 1999-2000 to 2001-02. However, we are making it clear that as the assessments for the three years in question are open, the Assessing Officer can certainly go into the question as to whether the conditions stipulated in the third proviso and the 13th proviso to Section 10(23C)(vi) of the said Act have been met and appropriate orders can be passed by the Assessing Officer in accordance with law. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

AUGUST 13, 2015
SU