

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

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Judgment Reserved on: 23rd April 2015
Judgment Delivered on: 24th September, 2015

+ **WP(C) 4725/2012 & CM No.9795/2012**

RAM PIYARI DEVI CHARITABLE TRUST AND ANR PETITIONER

VERSUS

DIRECTOR GENERAL OF INCOME TAX, DELHI & ANR RESPONDENTS

Advocates who appeared in this case:

For the Petitioner: Mr C.S. Aggarwal, Sr Advocate with Mr Prakash Kumar and Ms Pushpa Sharma, Advocates.

For the Respondents: Mr Rohit Madan with Mr Akash Vajpai, Advocates for Revenue.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. This writ petition is directed against the order dated 28.06.2012 passed by the Director General of Income Tax (Exemptions) on an application for grant of exemption under Section 10(23C) (vi) and (via) of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act) for the Assessment Year 2010-11 onwards relevant to the Assessment Year 2011-12 onwards. By virtue of the said order, the application of the petitioner for grant of exemption has been rejected.

2. The petitioner is registered as a Trust by the Deed of Settlement dated 21.07.1998 and is also registered under Section 12A of the said Act vide order dated 25.08.1998 for the Assessment Year 2010-11 onwards. The Trust is running a school in the name of Delhi Public School at New Town, Kolkata.

3. With regard to the application filed by the petitioner seeking exemption under Section 10(23C)(via) of the Act, the application has been rejected on the ground that the said provisions relate to hospitals and medical relief and since the petitioner is running a school, the petitioner is not eligible to apply in the said category.

4. With regard to the claim of exemption under Section 10(23C)(vi), the application has been rejected on the ground that in the Statement of Objects of the Trust, there are various activities mentioned and, as such, it was held that the petitioner is not existing solely for the purposes of education as envisaged in Section 10(23C) (vi) of the Act.

5. By the impugned order, the Director General of Income Tax has held that, for the purposes of claiming exemption under the said provisions, the institution should be existing solely for educational purposes and since in the Statement of Objects of the Trust various activities are mentioned, the petitioners are not eligible for grant of exemption. The Director General has further held that from the documents submitted by the petitioner it was apparent that the school was meant for students whose parents belong to

Higher Income Group and there was generation of surplus during the various years, which showed that the school was being run as a business. It is held that the Trust has been founded by a prominent businessman in the hotel industry and he alongwith his wife are trustees of the Trust and have full power to run the Trust as they deem fit. It has been held that funds used in the school have been generated from secured loans, unsecured loans or fee charged from the students and the borrowing has resulted in heavy outgo of the money in the form of interest payment and further that the Trust has made donations towards corpus fund of another school whereas the funds should have been utilized for reducing the cost by return of a secured loan and, consequently, reducing the burden on the students. It has thus been held that the school is being run as a business and not as a charity. It has further been held that the trust in no way can be said to be existing solely for educational purposes and not for the purposes of profit.

6. The learned counsel for the petitioner has contended that for considering an application for grant of exemption under section 10(23C)(vi), what is relevant to be considered is the activity that the trust is indulging in. It is contended that admittedly, the trust is running a school and apart from that, no other activity is being carried on by the trust. It is contended that merely because there are other objects mentioned in the object clause of the Trust, does not *ipso facto* imply that the trust does not exist solely for educational purposes. It is contended that at the time of grant of exemption, the prescribed authority is empowered to impose conditions, failure to

comply with which can result in withdrawal of approval.

7. It is contended that there is a distinction in grant of an approval and in compliance with the conditions for approval. It is submitted that for the purposes of grant of an approval, the Competent Authority has to only examine whether there is in existence an educational institution and, secondly, whether an application in the standardized form in terms of the first proviso to Section 10(23C) (vi) and (via) has been moved by the petitioner or not. It is submitted that with regard to the actual application of funds, the matter is to be considered at a later stage after grant of approval. In case there is application of funds contrary to the conditions stipulated for grant of permission, the Competent Authority is always empowered to withdraw/deny the benefits of the exemption.

8. The decision of the Supreme Court in **American Hotel & Lodging Association, Educational Institute v. Central Board of Direct Taxes and Ors., 2008 (301) ITR 86 SC** has been relied upon by another Division Bench of this Court in **Digambar Jain Society for Child Welfare vs. Director General of Income Tax (Exemptions): 456 Delhi 329 ITR** where it has been held that by virtue of the Supreme Court's decision in **American Hotel & 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 laid down by the Division Bench that when an application for exemption is moved by a Trust, fund, university or other educational institution, the threshold conditions which are to be examined at the stage of

grant or rejection of exemptions are: (i) actual existence of an educational institute, (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 has also clarified after interpreting the Supreme Court's decision in *American Hotel & 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 monitoring conditions rather than a condition for grant of or rejection of approval. It was clarified that only in the event that the conditions stipulated in the third proviso are not fulfilled, after grant of exemption, that the prescribed authority is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein.

9. The decision of the Supreme Court in *American Hotel & Lodging Association* (*supra*) has been further reiterated by the Supreme Court in the case of *M/s. Queen's Educational Society v. Commissioner of Income Tax*: **372 ITR 699 SC** wherein the Supreme Court summed up the law 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.”

10. It is not denied by the revenue that the only activity that the petitioner is indulging in is education namely running of a school and no other activity.

11. The requirements of Section 10(23C) (vi) as laid down by the Supreme Court are: (i) existence of an educational institution and (ii) approval of the prescribed authority for the purposes of grant of exemption for which an application in the prescribed form has been filed. In the present case, the petitioner satisfies both the tests. There is admittedly an educational institution in existence and the petitioner has also moved an application in the prescribed form.

12. The inquiry conducted by the Director General with regard to the application of funds and generation of profit is to be conducted post the

grant of approval. If the above conditions are satisfied, in the first instance, the Competent Authority is to grant approval. The Competent Authority is empowered to impose conditions while granting such approval. The inquiry whether the conditions had been complied with or not, as envisaged by the third proviso to Section 10(23C), is to be conducted post grant of approval and not as a condition precedent to grant of approval.

13. Further, merely because some profit is generated does not *ipso facto* imply that the educational institution is existing for profit motive. We are of the view that the impugned order cannot be sustained inasmuch as the Competent Authority went to the stage post grant of approval for considering whether approval can be granted in the first instance or not.

14. The impugned order is accordingly set aside.

15. In ***Digambar Jain Society*** (*supra*), this Court after setting aside the impugned order therein had 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 only activity of the petitioner is that of running of a school and the petitioner is not indulging in any activity for the purposes of profit and these are the only requirements for grant of approval and, therefore, in the same manner as in the case of ***Digambar 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 2011-12 onwards. However, we are making it clear that the assessing authority can 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 Authority in accordance with law.

16. The writ petition is allowed to the aforesaid extent. There shall be no order as to costs.

SANJEEV SACHDEVA, J.

BADAR DURREZ AHMED, J.

SEPTEMBER 24 , 2015
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