

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P. No. 14010 of 2016

Pronounced On : September 28, 2016

Shri Guru Ram Dass Ji Educational Trust Petitioner

vs.

Chief Commissioner of Income Tax, Amritsar Respondent

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

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

Mr. Denesh Goyal, Advocate
for the respondent.

* * *

DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks quashing of order dated 03.03.2015 passed by the Chief Commissioner of Income Tax, Amritsar (for short – the Chief Commissioner), through which, its application for grant of exemption made under Section 10 (23C) of the Income Tax Act, 1961 (for short – the Act) has been rejected.

The petitioner Trust is stated to have been constituted with the purpose of facilitating the Charitable, Social, Cultural, Educational, Vocational and Economic Development of the Society. It was registered on 16.08.2007 under the provisions of Societies Registration Act, 1860. Since

in the Financial Year 2013-14 (Assessment Year 2014-15), its receipts exceeded ₹ 1 crore, through an application dated 25.03.2014, it applied to the Chief Commissioner seeking exemption under Section 10(23C)(vi) of the Act. As required, Form No. 56-D, prescribed under Rule 2CA of the Income Tax Rules, 1962 (for short – the Rules), was also filed.

In pursuance to the said application, through letter dated 16.04.2014, the respondent-Department sought from the petitioner certain information including its accounts for the year ending 31.03.2014, objects of the petitioner and returns of income filed earlier. The required information along with Audit Reports including the Balance Sheets, Profit and Loss Accounts, Student Activity Fund, Student Development Fund, Fixed Assets, Capital Accounts, Income and Expenditure Accounts, particulars with regard to cash in the Bank, Secured and Unsecured Loans etc., for the year ending 31.03.2014, were supplied.

Thereafter, the petitioner received notice for grant of opportunity of hearing, which was granted on 24.02.2015, during the course of which, it was pointed out that the petitioner had prematurely filed the application on 24.03.2014 and that the same could only have been filed after the expiry of Financial Year 2013-14 and before 30.09.2014. The petitioner filed a written response to the same explaining therein that as soon as the receipts of the petitioner exceeded ₹ 1 crore, the application was filed and that, as per the 14th Proviso to Section 10(23C), such application could be filed anytime before 30th September of the Assessment Year, in relation

to which the exemption was sought. The petitioner's plea did not receive a favourable response as the same was rejected through the order impugned before us on the ground that such application could have been filed only between 1st April and 30th September of the relevant Assessment Year. Columns No. 11 to 19 of Form No. 56-D were also referred to say that the required information under the columns would be available only after 1st April of the relevant Assessment Year. It is in this background that the present petition has been filed for the afore-referred reliefs.

Sections 10(23C)(iiiab), 10(23C)(iiiad), 10(23C)(vi) along with its 1st and 14th proviso, which are relevant for adjudicating upon the present petition, are reproduced below for reference :-

“Section 10(23C) - any income received by any person on behalf of -

xx xx xx xx

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

xx xx xx xx

(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*

xx xx xx xx

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

xx xx xx xx

Provided that the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)] :

xx xx xx xx

Provided also that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be [made on or before

the 30th day of September of the relevant assessment year] from which the exemption is sought :

Under Section 10(23C)(iiiad) read with Section 10(23C)(vi) and the 1st proviso to Section 10(23C), an institution, which is not wholly or substantially funded by the Government, solely set up for the purpose of education and not for the purpose of profit, whose receipts exceed ₹ 1 crore, to claim exemption under Section 10(23C), is required to make an application in the prescribed manner to the prescribed Authority. Thus, as soon as the receipts of such institution exceed ₹ 1 crore, an application for grant of exemption can be made.

A plain reading of the 14th proviso to Section 10(23C), as reproduced above, leaves no doubt in our minds that an application under the same can be filed on or before 30th September of the relevant Assessment Year, from which the exemption is sought. The said proviso simply gives an outer date for making the application, which is 30th September of the Assessment Year, for which the exemption is sought. The proviso does not say that the application is to be made between 1st April and 30th September of the Assessment Year, for which the exemption is sought. The plain and simple meaning, as made out on reading the proviso, is unambiguous. No external aid is necessary. If the stand of the respondent is to be accepted, then we would have to necessarily add to the 14th proviso a condition that the application shall be made after 1st April and before 30th

sought. We find no necessity to do so.

The view that we have taken causes the respondent no prejudice. A Trust may know or have reason to believe prior to 1st April that its receipts are likely to exceed ₹ 1 crore. There is no reason why such an institution ought not to be permitted to make the application even before the 1st day of April of the relevant year. If, for any reason, the receipts do not exceed ₹ 1 crore, the application would not be processed further. Neither the Revenue nor the assessee would be prejudiced. If the application is moved prior to 1st April of the Assessment Year, from which the exemption is sought, during the pendency of such application, if any relevant information is required, the Authorities are well within their rights to ask for the same before taking a final decision on the application. In fact, in the case in hand, the accounts for the year ending 31.03.2014 were asked for by the Authorities and the same, along with the audit report, were duly supplied by the petitioner.

Prior to the year 2009, applications under the 14th proviso to Section 10(23C) were required to be filed before 31st March of the Financial Year, for which the exemption was being sought. As per the amendment brought about in the year 2009, which came into effect from 01.04.2009, the 14th proviso was amended to what it reads presently. As per the Notes of Clauses, the amendment was being made to allow filing of applications on or before 30th September of the relevant Assessment Year, from which the exemptions were being claimed. Had the Legislature intended to fix a date,

institution referred to in serial number 1 are invested or deposited showing the nature, value and income from the investment.

(ii) *Details of funds not invested in the modes specified in section 11 (5) :*

<i>Sl. No.</i>	<i>Name and address of the concern</i>	<i>In the case of a company, number and class of shares held</i>	<i>Nominated value of the investment</i>	<i>Income from the investment</i>
1	2	3	4	5

14. **(i)** *Is the university or other educational institution or hospital or other medical institution referred to in serial number 1 carrying on any business (give details) ?*

(ii) *Is the business incidental to the attainment of its objects ?*

15. *Details of nature, quantity and value of contributions (other than cash) and the manner in which such contributions have been utilized.*

16. *Details of shares, securities or other property purchased by or on behalf of the university or other educational institution or hospital or other medical institution referred to in serial number 1 from any interested person as specified in sub-section (2)*

of section 13.

- 17.** *Whether any part of the income or any property of the university or other educational institution or hospital or other medical institution referred to in serial number 1 was used or applied, in a manner which results directly or indirectly in conferring any benefit, amenity or perquisite (whether converted into money or not), on any interested person as specified in sub-section (3) of section 13 ? If so, details thereof.*
- 18.** *Amount deemed to be income of the university or other educational institution or hospital or other medical institution referred to in serial number 1 if sub-section (3) of section 11 is made applicable.*
- 19.** *The income that would have been assessable if the university or other educational institution or hospital or other medical institution referred to in serial number 1 had not enjoyed the benefit of section 10(23C)(vi) or (via).*

Notes :

- 1.** *The application form, -*
(a) *filed before the specified date, should be sent to the Chief Commissioner or Director General whom the Central Board of Direct*

Taxes may authorize to act as prescribed authority, for the purposes of sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, through the Commissioner of Income-tax or Director of Income-tax (Exemptions) having jurisdiction over the university or other educational institution or hospital or other medical institution referred to in serial number 1 of this Form ;

- (b)** *filed on or after the specified date, should be sent to the Principal Commissioner or the Commissioner whom the Central Board of Direct Taxes may authorize to act as prescribed authority for the purposes of sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.*

Four copies of the application form along with the enclosures should be sent.

2. *Copies of the following documents should be annexed :-*

- (i)** *Deed of trust/memorandum and articles of association/other documents evidencing legal status of the enterprise;*
- (ii)** *a list of major office bearers including settlor/members of the Governing body;*
- (iii)** *a photocopy of the latest certificate under section 80G issued by the Commissioner of Income-tax, if any;*
- (iv)** *true copies of the assessment orders passed for the last three years, if any;*
- (v)** *photocopy of communication from the Commissioner of Income-tax with reference to the application of the trust/institution for a registration under section 12A, if any.*

3. *The applicant shall furnish any other*

documents or information as required by the Chief Commissioner or Director General or Principal Commissioner or Commissioner or any authority authorised by the Chief Commissioner or Director General or Principal Commissioner or Commissioner, as the case may be.”

It is the un rebutted case of the petitioner that the above quoted columns were the same even prior to the above said amendment made in the year 2009. At that time, applications for seeking exemption could be made only prior to 31st March of the relevant Financial Year, for which the exemption was being sought. The information supplied by the applicant against these columns at that time was considered adequate by the Department.

Even otherwise, if an application under the 14th proviso, as it stands today, is filed prior to 1st April of the relevant Assessment Year, for which exemption is sought for and after the filing thereof, any further information is still needed by the respondent Authorities, before taking a final decision thereupon, that information can be sought for from the applicant. As observed earlier, this was done in the case in hand, in which all the accounts for the year ending 31.03.2014, when asked for, were duly provided by the petitioner much before the passing of the order impugned before us.

Note 1(a) to Form No. 56-D provides that an application can be filed before the specified date and Note 3 clearly provides that after filing of the application, an applicant shall furnish any other documents or

information as required by the Chief Commissioner or any other Authority authorised by the Chief Commissioner, as the case may be. These Notes clearly indicate that the application can be filed even prior to 1st April of the relevant Assessment Year, from which the exemption is sought.

In view of the above, the impugned order dated 03.03.2015 passed by the Chief Commissioner is set aside with a direction to the Chief Commissioner to consider the application filed by the petitioner for grant of exemption under Section 10 (23C) of the Act, on merits.

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>

(S. J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

September 28, 2016
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