NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (T) NO. 852 OF 2011

Gyan Ganga Educational Academy, Village Nardaha, Baloda Bazar Road, Raipur (C.G.), through Smt. Manju Shandilya, W/o Late Shri Upendra Kumar Shandilya, aged about 60 years, R/o S-25, Rajeev Nagar, P.O. Shankar Nagar, Raipur (C.G.)

… Petitioner

Versus

Chief Commissioner of Income Tax, Central Revenue Building, Civil Line, Raipur (C.G.)

… Respondent

For Petitioner	:	Ms. Smiti Sharma, Advocate.
For Respondent	:	Mr. Amit Chaudhary, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/08/2017

1. The present writ petition under Article 226 of the Constitution of India has been filed by the Petitioner assailing Annexure P-5 which is an order passed by the Chief Commissioner of Income Tax, Raipur, on 9.9.2009, under Section 10(23C)(*vi*) of the Income Tax Act, 1961, whereby the claim of the petitioner-society for grant of exemption of income tax under the aforementioned provision has been rejected.

2. The petitioner-society is a society registered under the Societies Registration Act, 1973 and is running an educational institution which also imparts free education to the economically weaker students and also provides concession to the children of government employees and surplus fund of the institution is being used to sponsor programs promoting education.

3. Under the provisions of the Income Tax Act, 1961, Section 10(23C)(*vi*) provides for a provision wherein an educational society can seek exemption under the head of income which do not form part of a total income, which reads as follows:

> **"10.** In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included–
>
> xxx xxx xxx
>
> **(23C)** any income received by any person on behalf of–
>
> xxx xxx xxx
>
> **(*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
>
> xxx xxx xxx**"**

4. The Petitioner had applied for grant of exemption of income tax under the aforesaid provisions. After hearing the parties, the Chief Commissioner of Income Tax vide impugned order (Annexure P-5) has rejected the application holding that from the record of the institution it appears that the petitioner-society was not utilizing its funds solely for the objects of the society. According to the Chief Commissioner, from the documents which have been furnished before the income tax authorities it appeared that the receipts which were received by the educational institution were been largely invested in infrastructure developments. The Chief Commissioner has relied upon the decision of the Uttarakhand High Court in the cases of *CIT, Nainital* v. *M/s Queen's Education Society, Nainital* and *CIT, Nainital* v. *M/s St. Paul's Sr. Secondary School, Nainital*, while rejecting the application of the petitioner-society.

5. The contention of the petitioner-society has been that, whatever surplus of receipts that they were having were being used for the development of the educational institution itself and that the accounts reflected it inasmuch as it was shown that the surplus amounts have been used for the infrastructure development of the educational institution itself. A perusal of the record would show that the department has not been able to show or establish as to whether the funds of the petitioner-establishment were being used or invested in some third-party agency other than the petitioner-establishment/institution and it was the stand of the petitioner that the investments were being made only for the infrastructure development of the institution itself and not for any other purposes.

6. What is all the more relevant at this juncture is that, the judgment which has been relied upon by the Chief Commissioner while passing the impugned order itself has subsequently been reversed/quashed by the Hon'ble Supreme Court in the case of **Queen's Educational Society** v. **Commissioner of Income Tax,** reported in **2015 (8) SCC 47**.

7. Learned Counsel for the Respondent however opposes the petition but does not dispute the fact that the judgment relied upon by the Chief Commissioner, i.e., the judgment of the Uttarakhand High Court, has since been reversed.

8. From the bare perusal of the impugned order, it clearly reflects that there is no material which was brought during the course of the enquiry with which it can be said that the investments in the infrastructure development were in those areas which are unconnected or unrelated to the petitioner-institution, whereas the contention of the petitioner in this regard was that they have made investments in infrastructure development but the said investments were all for the development/growth of the petitioner-establishment itself.

9. It is also pertinent to mention that a coordinate Bench of this Court in Writ Petition (T) No. 1516 of 2011 (G.H. Raisoni Foundation v. Chief Commissioner of Income Tax) also has elaborately dealt with the same issue vide its order dated 4.5.2007.

10. In view of the aforesaid factual matrix of the case and the authoritative decision of the Hon'ble Supreme Court in the case of **Queen's Educational Society** v. **Commissioner of Income Tax** (supra) and the decision of the coordinate Bench of this Court in a similar factual matrix, this Court has no hesitation in holding that in the instant case also the same view has to be applied.

11. The impugned order (Annexure P-5) thus deserves to be and is accordingly quashed and the matter is further remitted back to the Chief Commissioner of Income Tax (Exemptions) to decide the claim of the petitioner afresh and in the process they may have the liberty of again perusing the entire accounts of the petitioner-educational institution before deciding the application of the petitioner seeking exemption. However, while deciding the application the authority may take into consideration the judgment of the Hon'ble Supreme Court in the case of **Queen's Educational Society** v. **Commissioner of Income Tax** (supra).

12. The writ petition accordingly is allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

/sharad/