AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (T) No. 1516 of 2011

G.H. Raisoni Foundation, Jinkushal Campus, Near Sadar Rice Mill, Mowa, Raipur (C.G.) through Shri H. Sankalecha, S/o P. Sankalecha, aged about 36 years, Executive Member, G.H. Raisoni Foundation, Jinkushal Campus, Near Sadar Rice Mill, Mowa, Raipur (C.G.)

---- Petitioner

Versus

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

---- Respondent

For Petitioner: Mr. Neelabh Dubey, Advocate.
For Respondent : Ms. Nausina Afrin Ali, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/05/2017

Heard.

(1) This petition is directed against the order order dated 24.12.2009 passed by Chief Commissioner of Income Tax, by which, the petitioner's application filed under Section 10(23c)(vi) of the Income Tax Act, 1961 (henceforth "Act, 1961") has been rejected.

(2) The petitioner, who is a registered society running educational institutions, made an application for grant of exemption under section 10(23c)(vi) of the Act, 1961 for the assessment year 2008-2009 in the prescribed form supported by copies of audited accounts and balance sheets for the last three

years and the other relevant documents.

(3) The Chief Commissioner, Income Tax, by its impugned order dated 24.12.2009 rejected the same holding that the petitioner- Society has failed to prove that the Institution exists solely for the educational purpose. It was further held that the petitioner has invested the surplus amount of institution in infrastructural development such as addition to land etc. and, therefore, the petitioner is not eligible for exemption under Section 10(23C)(vi) of the Act, 1961 in view of the decision of Uttarakhand High Court, Nainital dated 24th September, 2007 (**CIT, Nainital Vs. M/s Queen's Education Society, Nainital**).

(4) Feeling aggrieved and dissatisfied against the order dated 24.12.2009, instant writ petition has been filed questioning the same.

(5) Learned counsel appearing for the petitioner would submit that the petitioner's application for exemption tax has not been considered in its right perspective, and the order impugned is based on perverse and non-existent grounds He would submit that there is no finding that income obtained from the educational institution is being used for non-educational purposes and the decision relied upon by the learned Commissioner i.e. **M/s Queen's Education Society, Nainital(supra)** while passing the impugned order has been reversed by the Supreme Court in case of **<u>Queen's Educational Society Vs. Commissioner of Income</u>**

Tax[1]. He also relied upon the decision of Cacutta High Court Court in the matter of **Birla Vidhya Vihar Trust Vs. Commission of Income Tax, Central I, Calcutta**[2] in support of his case.

(6) Per contra, learned counsel appearing for the respondent would submit that there is clear cut finding recorded by the Chief Commission of Income Tax that surplus fund of the said Educational Institution has been invested in the infrastructural development such as addition to land and, therefore, the petition deserves to be dismissed.

(7) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove with utmost circumspection.

(8) The petitioner's application for exemption filed under Section 10 (23C)(vi) of the Act, 1961 has been considered by the Chief Commissioner of Income Tax and only finding has been recorded that the additional income/surplus income has been invested in the infrastructural development such as addition to land etc. but no specific finding has been recorded regarding the fact that whether it is for the educational purposes or not.

(8) Though, finding has been recorded that the petitioner-Society has other purposes apart from the educational purposes but no supporting reasons have been assigned in the order impugned to hold that institution does not exists solely for the educational purposes though number of documents and audited

1 (2015) 8 SCC 47
2 1982 ITR Vol. 36 page 445

accounts for three financial years have been filed by the petitioner-Society and the he decision relied upon the learned Commissioner in case of **M/s Queen's Education Society, Nainital(supra)** while passing the impugned order has been overturned by the Supreme Court in case of **Queen's Educational Society Vs. Commissioner of Income Tax (supra),** in which their Lordships have held as under:-

> "11. Thus, the law common to Sections 10(23-C)*(iii-ad)* and *(vi)* may be summed up as follows:
>
> *(1)* Where an educational institution carried 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 cease to be one existing solely for educational purposes.
>
> *(5)* The ultimate test is whether on an overall view of the matter in the assessment year concerned the object is to make profit as opposes to education purposes.

(9) Applying the ratio of law laid down by the Supreme Court in

above referred case of **Queen's Educational Society (supra)** in the facts of the present case, it is quite vivid that the conditions precedent for invoking Section 10 (23C)(vi) of the Act, 1961 has not been considered by Chief Commissioner of Income Tax in its proper perspective and, therefore, I deem it expedient to set aside the impugned order and remit back the matter to the Chief Commissioner of Income Tax to decide the petitioner's application afresh keeping in view the principle laid down by the Supreme Court in **Queen's Educational Society (supra)** and other applicable law on subject expeditiously preferably within a period of two months from the date of receipt of copy of this order in accordance with law after affording due opportunity of hearing to both the parties. Order accordingly,

(10) Accordingly, the writ petition is allowed in part to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-