IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 23765 of 2011

Date of Decision: 8.2.2017

Sanatan Dharam Shiksha Samiti, Hansi

....Petitioner.

Versus

Chief Commissioner of Income Tax, Panchkula

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Sandeep Goyal, Advocate for the petitioner,
in CWP Nos. 23765 of 2011 and 24909 of 2012.

Mr. Deepak Aggarwal, Advocate and
Mr. Rohit Gupta, Advocate, for the petitioner,
in CWP Nos. 16104 of 2009, 18811 of 2012 and 1414 of 2014.

Mr. Vishal Gupta, Advocate for the petitioner,
in CWP No. 25112 of 2012.

Mr. Denesh Goyal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of six writ petitions bearing CWP Nos. 23765 of 2011, 16104 of 2009, 18811, 24909, 25112 of 2012 and 1414 of 2014 as according to the learned counsel for the parties, the issue involved therein is identical. For brevity, the facts are being extracted from CWP No. 23765 of 2011.

2. CWP No. 23765 of 2011 has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 26.9.2011 (Annexure P-9) passed by the

respondent rejecting the application dated 16.9.2010 (Annexure P-4) filed by the petitioner for exemption/approval under Section 10(23C)(vi) of the Income Tax Act, 1961 (in short "the Act") for the assessment year 2010-11. Further, a writ of mandamus has been sought directing the respondent to grant exemption to the petitioner under Section 10(23C)(vi) of the Act.

3. The facts, in short, necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is a Society registered under the Societies Registration Act, 1860 with the Registrar of Societies vide Registration Certificate dated 16.9.1992 (Annexure P-1). It is an educational institution for educational purposes as is discernible from the Memorandum of Association (Annexure P-2). The petitioner had been regularly filing its income tax returns including the returns (Annexure P-3 Colly) filed for the last three years. Since it had been for educational purposes and not for the purposes of earning profit, the petitioner was entitled to exemption under Section 10(23C)(vi) of the Act. The petitioner vide application dated 30.9.2010 (Annexure P-4) applied for exemption under Section 10(23C)(vi) of the Act from the assessment year 2010-11 along with the requisite documents. In response thereto, the Income Tax Officer, vide notice dated 29.7.2011 (Annexure P-5) asked the petitioner to appear in person. The petitioner vide letter dated 17.8.2011 (Annexure P-6) submitted a detailed reply pleading that it is imparting education and charitable activities are covered under Section 2(15) of the Act. The Income Tax Officer, Hisar vide letter dated 20.9.2011 (Annexure P-7) raised certain other queries and the petitioner explained the queries vide letter dated 22.9.2011 (Annexure P-8). The respondent vide order dated 26.9.2011 (Annexure P-9) rejected the application of the petitioner for grant of

exemption under Section 10(23C)(vi) of the Act. Hence, the present writ petition.

4. We have heard the learned counsel for the parties and have perused the record.

5. Learned counsel for the petitioner placed reliance upon the judgment of this Court in **Pine Grove International Charitable Trust v. Union of India (2010) 327 ITR 273** which was affirmed by the Apex Court. Further, reliance was also placed upon the decision of the Supreme Court in **M/s Queen's Educational Society v. Commissioner of Income Tax, AIR 2015(SC) 3253.**

6. On the other hand, the order declining the grant of benefit under Section 10(23C)(vi) of the Act was sought to be justified by placing reliance upon the decision of the Karnataka High Court in **Visvesvaraya Technological University v. Assistant Commissioner of Income Tax (2014) 362 ITR 279** which was affirmed by the Apex Court in **Visvesvaraya Technological University v. Assistant Commissioner of Income Tax (2016) 384 ITR 37 (SC)**.

7. Besides the aforesaid, both the parties had also relied upon the proposition of law laid down by this Court in **Commissioner of Income Tax, Jalandhar-I, Jalandhar v. Gulab Devi Memorial Hospital Trust, Jalandhar, ITA No. 602 of 2010** decided on 23.12.2016. In view of the aforesaid decisions, it was urged by learned counsel for the parties that keeping in view the factual matrix involved herein, the issue is required to be adjudicated in their favour.

8. After hearing learned counsel for the parties at length, it is considered appropriate to remit the matter to the respondent who shall on

the basis of facts involved in each case apply the legal principles enunciated in the above noted pronouncements. Accordingly, we set aside the impugned order and remand the matters to the respondent to decide afresh to which there was no serious opposition by the learned counsel for the respondent.

9. Consequently, the writ petitions are allowed and the order dated 26.9.2011 (Annexure P-9) passed by the respondent is set aside. Correspondingly, the impugned orders passed in other writ petitions noticed in para 1 of the order are also set aside. The matters are remitted to the respondent for deciding afresh in accordance with law after affording an opportunity of hearing to the parties. Needless to say that anything observed herein before shall not be taken as an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

February 8, 2017
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes**