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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.6095 of 2007

(Order dated 10-5-2007 passed by the Under Secretary to the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, New Delhi)

State Bar Council of Chhattisgarh, A body corporate under section 5 of the Advocates Act, 1961, situated at High Court Premises, Bilaspur (C.G.) through its officer on Special Duty and officiating secretary, V.A. Narayanan.

---- Petitioner

Versus

1. Commissioner of Income Tax, Bilaspur (C.G.), Aaykar Bhavan, Vyapar Vihar, Bilaspur (C.G.)
2. Chief Commissioner of Income Tax (C.G.), New Central Revenue Building, Civil Lines, Raipur (C.G.)
3. Assistant Commissioner of Income Tax, Circle 1(1), Aaykar Bhavan, Vyapar Vihar, Bilaspur (C.G.)
4. Central Board of Direct Taxes, through Secretary, North Block, New Delhi.
5. Union of India, through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi
6. Director General of Income Tax (Exemption), Plot No.15, II Floor, Laxmi Nagar, District Centre, New Delhi

---- Respondents

Writ Petition (T) No.167 of 2009

State Bar Council of Chhattisgarh, A body corporate under section 5 of the Advocates Act, 1961, situated at High Court Premises, Bilaspur (C.G.) through its Secretary Anand Mohan Tiwari.

---- Petitioner

Versus

1. Assistant Commissioner of Income Tax, Circle 1(1), Aaykar Bhavan, Vyapar Vihar, Bilaspur (C.G.)
2. Commissioner of Income Tax, Bilaspur (C.G.), Aaykar Bhavan, Vyapar Vihar, Bilaspur (C.G.)
3. Chief Commissioner of Income Tax (C.G.), New Central Revenue

Building, Civil Lines, Raipur (C.G.)

4. Central Board of Direct Taxes, through Secretary, North Block, New Delhi.
5. Union of India, through Secretary, Ministry of Finance, Department of Revenue.
6. Manager, State Bank of India, Branch High Court Campus, Bilaspur (C.G.)

---- Respondents

AND

Writ Petition (T) No.217 of 2009

State Bar Council of Chhattisgarh, A body corporate under Section 5 of the Advocates Act, 1961, situated at High Court Premises, Bilaspur (C.G.) through its officer on Special Duty and officiating secretary, V.A. Narayanan.

---- Petitioner

Versus

1. Assistant Commissioner of Income Tax, Circle 1(1), Aaykar Bhavan, Vyapar Vihar, Bilaspur (C.G.)
2. Commissioner of Income Tax, Bilaspur (C.G.), Aaykar Bhavan, Vyapar Vihar, Bilaspur (C.G.)
3. Chief Commissioner of Income Tax (C.G.), New Central Revenue Building, Civil Lines, Raipur (C.G.)
4. Central Board of Direct Taxes, through Secretary, North Block, New Delhi.
5. Union of India, through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi
6. Director General of Income Tax (Exemption), Plot No. 15, II Floor, Laxmi Nagar, District Centre, New Delhi

---- Respondents

For Petitioner: Mr. Neelabh Dubey, Advocate.

For Respondents / Income Tax Department: -

Mr. Amit Chaudhari, Advocate.

For Respondent No.6 / SBI in W.P.(T)No.167/2009: -

Mr. Prasun Kumar Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/04/2018

1. Since common question of law and fact is involved in these three writ petitions, they are heard together and are being disposed of by this common order.
2. The State Bar Council of Chhattisgarh is a statutory body constituted under Section 3 of the Advocates Act, 1961 (for short, 'the A Act') read with Section 24(2) of the Madhya Pradesh Reorganisation Act, 2000 (for short, 'the Act of 2000') with effect from 1-11-2000 upon carving out of the new State of Chhattisgarh. The undivided Bar Council of Madhya Pradesh was availing the exemption granted by the Central Government by notification dated 9-8-1966 from taxation of its income other than those specifically excluded under Section 10(23A) of the Income Tax Act, 1961 (for short, 'the IT Act').
3. The State Bar Council of Chhattisgarh started functioning with effect from 1-11-2000 upon reorganisation of the State of Madhya Pradesh, but did not make any application for fresh exemption under Section 10(23A) of the IT Act presumably on the ground that the notification issued by the Central Government exempting the Bar Council of Madhya Pradesh from the provisions of the IT Act under Section 10(23A), dated 9-8-1966 would also be applicable to the Bar Council of Chhattisgarh by virtue of the provisions contained in Section 2(f) read with Sections 78 and 79 of the Act of 2000. But the understanding of the State Bar Council of Chhattisgarh did not act as the order of assessment Annexure P-1 for the assessment year 2004-05 and 2005-06 came to be passed

by the assessing officer of the Income Tax Department assessing the income ₹ 26,34,767/- and ₹ 40,98,770/-, respectively, and holding that the petitioner Council did not have any valid exemption certificate granted by the competent authority under the provisions of sub-section (23A) of Section 10 of the IT Act leading to filing of these writ petitions challenging those orders of assessment directing payment of tax liability.

4. The facts projected in the writ petitions by the petitioner Council are that the exemption granted by the Central Government to the erstwhile Bar Council of Madhya Pradesh by notification dated 9-8-1966 would constitute a law within the meaning of Sections 2(f), 78 and 79 of the Act of 2000 and that would continue to operate and would apply to the State Bar Council of Chhattisgarh, as it is not a new State Bar Council, though it is State Bar Council of Chhattisgarh constituted but by virtue of Section 24(2) of the Act of 2000, it is a bifurcation of the undivided State Bar Council of Madhya Pradesh into two Bar Councils namely, the Bar Council of Madhya Pradesh and the Bar Council of Chhattisgarh by amending Section 3(1)(a) of the A Act, therefore, no separate exemption is to be granted by the Central Government by virtue of the provisions contained in sub-section (23A) of Section 10 of the IT Act and unless the Central Government withdraws the exemption already granted to the Bar Council of Madhya Pradesh on 9-8-1966, it would continue to apply to the Bar Council of Chhattisgarh. It has further been pleaded that the respondents did not understand the law properly and assessment orders were issued, then only the

petitioner by way of abundant precaution made an application vide Annexure P-2 on 4-8-2005 to the Central Government for exemption from the IT Act under the proviso to sub-section (23A) of Section 10 of the IT Act and claimed exemption from payment of tax with effect from 1-11-2000, but erroneously, the Central Government granted exemption from assessment year 2006-07 and onwards by order dated 10-5-2007. Thus, the assessment order has been questioned preliminary on two grounds firstly, that the notification dated 9-8-1966 granted by the Central Government under sub-section (23A) of Section 10 of the IT Act would apply to the State Bar Council of Chhattisgarh also till it is modified or amended under the proviso to sub-section (23A) of Section 10 of the IT Act; and secondly, that even though the application was made subsequently, but the Central Government partly granted the application and partly rejected by not granting exemption with effect from 1-11-2000 without assigning any reason and without holding that the petitioner Council is not exempted from payment of tax from 1-11-2000 that is retrospective effect. Therefore, the impugned orders be set aside.

5. Return has been filed by the respondents / Income Tax Department stating inter alia that no express order has been passed by the Central Government in favour of the petitioner assessee granting exemption under the provisions of sub-section (23A) of Section 10 of the IT Act giving it retrospective effect or with effect from 1-11-2000 and when the application was made on 4-8-2005, the application has been considered and exemption has been granted

with effect from the assessment year 2006-07 and onwards, even otherwise, the order impugned is appealable under Section 246 of the IT Act. Therefore, the writ petitions cannot be entertained and are liable to be dismissed.

6. No rejoinder has been filed.
7. Mr. Neelabh Dubey, learned counsel appearing for the petitioner, would vehemently submit that the notification dated 9-8-1966 exempting the Bar Council of M.P. from operation of the provisions of the IT Act would apply automatically to the new Bar Council of Chhattisgarh constituted with effect from 1-11-2000 by operation of the Act of 2000 read with Sections 2(f), 78 and 79 of the Act of 2000, as the notification dated 9-8-1966 would constitute a law within the meaning of Section 2(f) of the Act of 2000 and, therefore, the order of assessment passed by the assessing officer of the respondents Department is per se without jurisdiction and without authority of law. He would additionally submit that even otherwise, when the respondent Department did not follow the law mandated by the Act of 2000 and assessment order was made, the State Bar Council of Chhattisgarh was forced to claim exemption with effect from 1-11-2000, but erroneously, again the exemption was granted with effect from 1-4-2005 i.e. for assessment year 2006-07 and onwards, and did not assign any valid and acceptable reason for not granting exemption with retrospective effect that is 1-11-2000 which the petitioner Council was entitled by operation of law, as it is not the case of the respondent Department that the petitioner Council is not entitled and not eligible for exemption under sub-

section (23A) of Section 10 of the IT Act with effect from 1-11-2000.

Therefore, the impugned order is liable to be set aside.

8. Countering the argument, Mr. Amit Chaudhari, learned Senior Standing Counsel appearing for the respondents Department, vehemently opposed the submissions made by Mr. Dubey, learned counsel for the petitioner, and would submit that the order being appealable under Section 246 of the IT Act, the writ petitions cannot be maintained and are liable to be thrown at the threshold without entering into merits of the matter. Further, replying the submission on merits, Mr. Chaudhari would submit that once the application claiming exemption was made on 4-8-2005, the competent authority rightly held the petitioner Council to be entitled for exemption from next assessment year 2006-07 and with effect from 1-4-2005 holding the petitioner Council to be entitled for exemption under sub-section (23A) of Section 10 of the IT Act, as such, there is no jurisdictional error or illegality committed in the impugned orders and the writ petitions deserve to be dismissed.
9. Mr. Prasun Kumar Bhaduri, learned counsel appearing for State Bank of India / respondent No.6 in W.P.(T)No.167/2009, would submit that the order of the Income Tax authority was complied with in its letter and spirit.
10. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the record with utmost circumspection.
11. Prior to reorganisation of the State of Madhya Pradesh by the Act of 2000, the undivided State Bar Council of Madhya Pradesh was in

existence. The Central Government in exercise of power conferred under sub-section (23A) of Section 10 of the IT Act, granted exemption to the erstwhile State Bar Council of Madhya Pradesh by notification No.37/3/66-IT(AI) dated 9-8-1966 exempting from taxation of its income other than those specifically excluded under Section 10(23A) of the Act of 1961. The notification dated 9-8-1966 has not been produced by the petitioner. However, “Law of Income Tax” authored by A.C. Sampath Iyengar (10th Edition) after Section 10(23A) of the Act of 1961 enlists Approved Bar Councils of different States including Madhya Pradesh as under: -

S.No.	Bar Council	Notification No. and Date	Effective from
1 to 11.	xxx	xxx	xxx
12.	Bar Council of Madhya Pradesh	F. No. 37/3/66-IT (AI) dated 9 th August 1966	13.1.1962

12. That, during the continuance of above-stated notification dated 9-8-1966, the Act of 2000 came into force with effect from 1-11-2000. A special provision relating to Bar Council and Advocates has been made in Section 24 of the Act of 2000, sub-sections (1) and (2) of which provide as under: -

“24. Special provision relating to Bar Council and Advocates.—(1) On and from the appointed day, in the Advocates Act, 1961 (25 of 1961), in Section 3, in sub-section (1), in clause (a), for the words “and Madhya Pradesh”, the words “Madhya Pradesh and Chhattisgarh” shall be substituted.

(2) Any person who immediately before the appointed day is an advocate on the roll of the Bar Council of the existing State of Madhya Pradesh may give his option in writing, within one year from the appointed day to the Bar Council of such existing State, to transfer his name on the roll of the Bar Council of Chhattisgarh and notwithstanding anything contained in the Advocates Act,

1961 (25 of 1961) and the rules made thereunder, on such option so given his name shall be deemed to have been transferred on the roll of the Bar Council of Chhattisgarh with effect from the date of the option so given for the purposes of the said Act and the rules made thereunder.”

13. A careful perusal of Section 24(1) of the Act of 2000 would show that in clause (a) of sub-section (1) of Section 3 of the A Act, in place of “Madhya Pradesh”, “Madhya Pradesh and Chhattisgarh” has been substituted. Thereafter, Section 3(1)(a) of the A Act stood as under: -

“3. State Bar Councils.—(1) There shall be a Bar Council—

(a) for each of States of Andhra Pradesh, Bihar, Gujarat, Jammu and Kashmir, Jharkhand, Madhya Pradesh, Chhattisgarh, Karnataka, Orissa, Rajasthan, Uttar Pradesh, Uttarakhand, Meghalaya, Manipur and Tripura, to be known as the Bar Council of that State;”

14. The aforesaid provision would clearly show that in place of erstwhile undivided Bar Council of M.P., two Bar Councils namely M.P. and Chhattisgarh State Bar Councils have been constituted by the provisions of the Act of 2000 and option was given to the Advocates practicing in the Bar Council of Madhya Pradesh to transfer their names on the roll of the Bar Council of Chhattisgarh and entitlement to practice in the High Court of Chhattisgarh has also been conferred by virtue of Section 24(3) of the Act of 2000. Thus, the Bar Council of Chhattisgarh was constituted by virtue of the provisions contained in Section 24(1) of the Act of 2000 with effect from 1-11-2000.

15. The State Bar Council of Chhattisgarh so constituted would be a body corporate by virtue of the provisions contained in Section 5 of

the A Act. Functions of State Bar Councils have been stated in Section 6 of the A Act, sub-section (1) of which provides as under: -

“6. Functions of State Bar Councils.—(1) The functions of a State Bar Council shall be—

- (a) to admit persons as advocates on its roll;
- (b) to prepare and maintain such roll;
- (c) to entertain and determine cases of misconduct against advocates on its roll;
- (d) to safeguard the rights, privileges and interests of advocates on its roll;
- (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7;
- (e) to promote and support law reform;
- (ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and paper of legal interest;
- (eee) to organise legal aid to the poor in the prescribed manner;
- (f) to manage and invest the funds of the Bar Council;
- (g) to provide for the election of its members.
- (gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;
- (h) to perform all other functions conferred on it by or under this Act;
- (i) to do all other things necessary for discharging the aforesaid functions.”

16. The Supreme Court in the matter of Commissioner of Income Tax, Bombay v. The Bar Council of Maharashtra¹ while dealing with the question of entitlement of the Bar Council of Maharashtra

¹ AIR 1981 SC 1462

for exemption under Sections 11 and 10(23A) of the IT Act has noticed the aforesaid object of the Bar Council and held as under: -

“10. ... It is clear that sub-section (1) lays down the obligatory functions while sub-section (2) indicates what are the optional or discretionary functions that could be undertaken by the State Bar Council and from amongst the obligatory functions it will be wrong to pick out one and say it is the primary or dominant object or purpose. All the clauses of sub-section (1) will have to be considered in light of the main objective sought to be achieved as indicated in the Preamble. The functions mentioned in clauses (a) and (b) of sub-section (1), namely, to admit persons as advocates on its roll and to prepare and maintain such roll, are clearly regulatory in character intended to ensure that persons with requisite qualifications who are fit and otherwise proper to be advocates are available for being engaged by the litigating public, the function prescribed in clause (c) has been enjoined upon avowedly with the objective of protecting the litigating public from unscrupulous professionals by taking them to task for any misconduct on their part; it is also one of the obligatory functions of a State Bar Council to promote and support measures for law reform as also to conduct law seminars and organise talks on legal topics by eminent jurists, obviously with a view to educate the general public, the function prescribed by clause (eee) is obviously charitable in nature, the same being to organise legal aid to the poor. Amongst these various obligatory functions one under clause (d) is to safeguard the rights, privileges and interests of the advocates on its roll and it is difficult to regard it as a primary or dominant function or purpose for which the body is constituted. Even this function apart from securing speedy discharge of obligations by the litigants to the lawyers ensures maintenance of high professional standards and independence of the Bar which are necessary in the performance of their duties to the society. In other words, the dominant purpose of a State Bar Council as reflected by the various obligatory functions is to ensure quality service of competent lawyers to the litigating public, to spread legal literacy, promote law reforms and provide legal assistance to the poor while the benefit accruing to the lawyer-members is incidental. ...”

17. Now, the question would be, whether the law, includes notification dated 9-8-1966 exempting the State Bar Council of M.P. under Section 10(23A) of the IT Act, applicable in the erstwhile undivided

State of M.P., would be applicable to the newly constituted State of Chhattisgarh including the State Bar Council of Chhattisgarh.

18. In order to answer that question, it would be appropriate to notice Section 2(f) of the Act of 2000 which defines what the law means and it states as under. It includes notification also.

“(f) “law” includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Madhya Pradesh;”

19. Thus, the above-stated definition of law includes notification dated 9-8-1966, which is an exemption granted by the Central Government to the erstwhile State Bar Council of M.P.. Thus, the notification dated 9-8-1966 is a notification included in the above-stated definition of law under Section 2(f) of the Act of 2000.

20. Part X of the Act of 2000 deals with Legal and Miscellaneous Provisions. Sections 78 and 79 of the Act of 2000, which come under Part X, respectively provide for Territorial extent of laws and Power to adapt laws, which state as under: -

“78. Territorial extent of laws.—The provisions of Part II of this Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Madhya Pradesh shall, until otherwise provided by a competent Legislature or other Competent Authority be constituted as meaning the territories with the existing State of Madhya Pradesh before the appointed day.

79. Power to adapt laws.—For the purpose of facilitating the application in relation to the State of Madhya Pradesh or Chhattisgarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be

necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority.”

21. The Supreme Court in the matter of Commissioner of Commercial Taxes, Ranchi and another v. Swarn Rekha Cokes and Coals (P) Ltd. and others² considering the issue as to whether in light of the Bihar Reorganisation Act, 2000, the law in force would be applicable to the State of Jharkhand, has clearly held that the law in force in the State of Bihar would be applicable in the State of Jharkhand unless modified by the competent Legislature or other competent authority. It was further held as under: -

“27. ... The language in these sections is clear and unambiguous. These sections provide that the laws which were applicable to the undivided State of Bihar would continue to apply to the new States created by the Act. The laws that operated continue to operate notwithstanding the bifurcation of the erstwhile State of Bihar and creation of the new State of Jharkhand. They continue in force until and unless altered, repealed or amended. It is not disputed before us and indeed it cannot be disputed in view of the wide definition given to “law” in [section 2\(f\)](#) of the Act that the notification issued under section 7(3)(b) of the Bihar Finance Act, 1981 is law within the meaning of [Sections 84](#) and [85](#) of the Act. Thus, the notification published in the Bihar Gazette on 22-12-1995 bearing SO No. 478 continues to operate in the State of Jharkhand till such time as it is altered, repealed or amended. By virtue of [Section 84](#), the territorial references in any such law (which includes the notification in question), to the State of Bihar shall be construed as meaning the territories within the existing State of Bihar before the appointed day, until otherwise provided by a competent legislature or other competent authority. A conjoint reading of both these provisions makes it abundantly clear that the territorial references in any law in force immediately before the appointed day must be construed as meaning the territories within the existing State of Bihar before the appointed day. To

2 (2004) 6 SCC 689

facilitate their application in respect of the State of Bihar or Jharkhand, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law as it may consider necessary or expedient by way of repeal or amendment. Till such law is so repealed or amended in accordance with law, it shall have effect. After their amendment or alteration, they shall have effect subject to the adaptations and modifications made. We, therefore, find no difficulty in holding that the notification of the Government of Bihar issued under Section 7(3)(b) of the Bihar Finance Act, 1981 and published in the gazette on 22-12-1995 being SO No. 478 is law as defined by [Section 2\(f\)](#) of the Act. The said notification holds the field and applies to all the territories which comprised the undivided State of Bihar. The States of Bihar and Jharkhand have been vested with power to make such adaptations and modifications of the law as they may consider necessary or expedient. This they can do by issuance of order before the expiration of two years from the appointed day. After the adaptations and modifications of the law, the law shall have effect as so modified or adapted till such time as a competent legislature or other competent authority further alters, repeals or amends such law.

29. ... The submission overlooks the provisions of [Sections 84](#) and [85](#) of the Act, which create a legal fiction. It is well settled that in interpreting a provision creating a legal fiction, the court must ascertain the purpose for which the fiction is created and having done so, to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. When the law requires that an imaginary state of affairs should be treated as real, then unless prohibited from doing so, one must also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. As Lord Asquith in *East End Dwelling Co. Ltd. v. Finsbury Borough Council*³, All ER at p. 589 observed that having done so, you must not cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs. [Section 84](#) bids us to imagine that despite the division of the erstwhile State of Bihar into two States, any law in force immediately before the appointed day, notwithstanding territorial references in them, shall, until otherwise provided by the competent legislature or other competent authority, be construed as meaning the territories within the existing State of Bihar before the appointed day. In simple words, though the law may

3 (1951) 2 All ER 587 : 1952 AC 109 (HL)

refer to the State of Bihar, and though the State of Bihar has been bifurcated into two by creating the State of Jharkhand, the laws in force before the appointed day must continue to operate in the territories which formed the erstwhile State of Bihar. This, of course, is subject to amendment, alteration or repudiation by a legislature or other competent authority. The statutory notification relied upon, therefore, continues to operate throughout the territories which earlier constituted the State of Bihar. Under [Section 85](#), they shall continue to operate until repealed or amended in the manner provided. As a natural consequence, the entrepreneurs are entitled to the benefits and incentives provided in the said notification. ...”

22. Similarly, a Division Bench of this Court in the matter of Gurumukh Singh Hora v. State of Chhattisgarh and others⁴ has clearly held that all the laws including any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instruments which were having the force of law before the appointed day in the whole of the State of Madhya Pradesh were to be continued in the State of Chhattisgarh as per the provisions of Section 79 of the Act of 2000, and observed as under: -

“14. It is true that as per sub-section (f) of Section 2 of the Act, 2000, all the laws including any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instruments which were having the force of law before the appointed day in the whole of the State of Madhya Pradesh were to be continued in the State of Chhattisgarh as per the provisions of Section 79 of the Act, 2000.

15. As per Section 79 of the Act, 2000, the State of Chhattisgarh was required to adapt the same before the expiration of two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. ...”

4 AIR 2005 Chhattisgarh 1

23. On the basis of aforesaid judgments (supra) and following the principles of law enunciated by the Supreme Court in Swarn Rekha Cokes and Coals (P) Ltd.'s case (supra) and by the Division Bench of this Court in Gurumukh Singh Hora (supra), I have no hesitation to hold that the notification dated 9-8-1966 is a law within the meaning of Section 2(f) of the Act of 2000 which was in existence in the erstwhile State of M.P. exempting the State Bar Council of Madhya Pradesh under Section 10(23A) of the IT Act and would also be applicable to the State Bar Council of Chhattisgarh till it is modified or altered by the competent authority by virtue of the provisions contained in Sections 78 and 79 of the Act of 2000.

24. Reverting to the facts of the present case, it is quite vivid that the notification dated 9-8-1966 issued by the Central Government exempting the State Bar Council of M.P. from taxation of income other than those specifically excluded under Section 10(23A) of the IT Act, was applicable and was in force in the new State of Chhattisgarh with effect from 1-11-2000 and would fall within the meaning of law under Section 2(f) of the Act of 2000 and by virtue of that, the State Bar Council of Chhattisgarh was entitled to have exemption under Section 10(23A) of the IT Act from the operation of IT Act, but that was not understood properly by the Income Tax Authorities and holding that the petitioner Council is not entitled for the said exemption, the petitioner Council was assessed to income tax imposing tax liability to the extent indicated herein-above ignoring the law in force at the time of assessment and the order of

recovery was passed. In the considered opinion of this Court, the petitioner Council was entitled and eligible to be exempted by virtue of the notification dated 9-8-1966 read with Sections 2(f), 78 and 79 of the Act of 2000 with effect from 1-11-2000, as it was not modified or altered by the Central Government upon reorganisation of the State of Chhattisgarh with effect from 1-11-2000 by the Act of 2000 and therefore the assessing authority has committed grave jurisdictional error in not holding so and proceeded to assess the tax liability of the petitioner Council under the IT Act. Since the order itself is without jurisdiction and without authority of law, the alternative remedy would not come in the way of the petitioner. Apart from this, the writ petitions are pending since 2007 and 2009 and thus, after eight years, the writ petitions cannot be thrown out on the ground of availability of alternative remedy when the parties appeared and argued the issue and the case is reached to the stage of final hearing. Therefore, the plea of alternative remedy raised on behalf of the respondents is hereby rejected.

25. Even for the assessment year 2004-05, the petitioner Council filed appeal which was dismissed and the matter went up to the Income Tax Appellate Tribunal and the Tribunal set aside the order holding that the matter is pending consideration before the High Court.

26. There is an additional reason for not upholding the order of assessment passed against the petitioner. Though the petitioner Council claimed exemption with effect from 1-11-2000 in a subsequently made application, but the Central Government – competent authority under Section 10(23A) of the IT Act simply

granted exemption from the assessment year 2006-07 and onwards by order dated 10-5-2007 and did not assign any reason as to why the petitioner is not entitled for exemption from 1-11-2000, especially when it is not the case of the respondent Department that the petitioner Council has ceased to perform its functions enumerated in Section 6 of the A Act and was not entitled for exemption with effect from 1-11-2000. In fact, the Central Government has failed to notice the operation of Sections 2(f), 78 and 79 of the Act of 2000, but despite the application having been made, the Central Government did not grant exemption from the date from which the petitioner Council was entitled to and rejected exemption from 1-11-2000 i.e. for 2004-05 and 2005-06 without assigning any reason and without even holding that the petitioner is not entitled for exemption from that period under Section 10(23A) of the IT Act.

27. Thus, for the aforesaid reasons, the order of assessment passed against the petitioner subjecting the petitioner Council to tax liability under the IT Act cannot be sustained.

28. As a fallout and consequence of the above-stated discussion, the impugned order of assessment dated 29-12-2006 (Annexure P-1) in W.P.(T)Nos.6095/2007 & 167/2009 for the assessment year 2004-05 imposing tax liability of ₹ 26,34,770/- and the impugned order of assessment dated 26-12-2008 (Annexure P-1) in W.P.(T) No.217/2009 for the assessment year 2005-06 imposing tax liability of ₹ 40,98,770/- are hereby quashed being without jurisdiction and without authority of law. Consequently, the order of the Central

Government dated 10-5-2007 (Annexure P-3) passed by the Under Secretary to the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, New Delhi also stands modified to the above extent and penalty proceedings initiated against the petitioner are also quashed. The respondent Income Tax Authorities are restrained from recovering the said tax from the petitioner.

29. Before parting with the record, I deem it proper to remind the duty of the petitioner State Bar Council, as rendered by the Supreme Court, to ensure quality service of competent lawyers to the litigating public, to spread legal literacy, promote law reforms and provide legal assistance to the poor and downtrodden people. I hope and trust that the State Bar Council will follow and observe the duty of the Council religiously and scrupulously as indicated.

30. The writ petitions are allowed to the extent outlined herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.6095 of 2007

State Bar Council of Chhattisgarh

Versus

Commissioner of Income Tax, Bilaspur and others

Writ Petition (T) No.167 of 2009

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State Bar Council of Chhattisgarh

Versus

Assistant Commissioner of Income Tax and others

Head Note

The State Bar Council of Chhattisgarh is entitled for income tax exemption under Section 10(23A) of the Income Tax Act, 1961 with effect from 1-11-2000 (from the date of constitution of the Council).

आयकर अधिनियम, 1961 की धारा 10(23A) के अन्तर्गत छत्तीसगढ़ राज्य विधिज्ञ परिषद् (बार काउंसिल) 1.11.2000 के प्रभाव से (परिषद् के गठन दिनांक से) आयकर से छूट का पात्र है।