IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-16541-2012 (O&M)

Date of Decision: 28.9.2018

Vaish Model Primary School Education Society

...Petitioner

Versus

Chief Commissioner of Income Tax, Panchkula

...Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

PRESENT: Mr. Sandeep Goyal, Advocate for the applicant-petitioner.

Mr. Denesh Goyal, Sr. Standing Counsel for the respondent.

AJAY KUMAR MITTAL, J.

1. This writ petition 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 30.5.2012 (Annexure P-10) passed by the respondent rejecting the application dated 26.9.2009 (Annexure P-3) 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 2009-10. 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.

2. Briefly stated, the facts 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 29.9.2009

(Annexure P-1). It is an educational institution for educational purposes as is discernible from the Memorandum of Association dated 29.9.2009 (Annexure P-2). The petitioner had been regularly filing its income tax returns. 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 26.9.2009 (Annexure P-3) applied for exemption under Section 10(23C)(vi) of the Act from the assessment years 2009-10 and onwards along with the requisite documents. In response thereto, the Income Tax Officer, vide letter dated 6.8.2010 (Annexure P-4) asked the petitioner to appear in person. The petitioner submitted detailed written submissions dated 29.9.2010 (Annexure P-5). The respondent vide order dated 29.9.2010 (Annexure P-6) rejected the application of the petitioner for grant of exemption under Section 10(23C)(vi) of the Act. Against the order, Annexure P-6, the petitioner filed CWP-4119-2011 and this Court vide order dated 3.10.2011 (Annexure P-7) allowed the writ petition and directed the respondent to re-decide the issue by keeping in mind the principles laid down in case **Pinegrove International Charitable Trust's case (supra)** and the earlier order dated 29.1.2010 passed in **Civil Writ Petition No. 858 of** 2009 and other connected petitions including the petitioner's writ petition being Civil Writ Petition No. 8258 of 2009 for the assessment years 2005-06 to 2008-09. Vide letter dated 27.12.2011 (Annexure P-8), the petitioner was directed to appear before the respondent on 9.1.2012. In response thereto, the counsel for the petitioner filed written submissions dated 25.5.2012 (Annexure P-9) along with the relevant documents. However, the respondent vide order dated 30.5.2012 (Annexure P-10) rejected the application of the petitioner for the claim of exemption. Hence, the present writ petition.

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

4. 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**.

5. 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)**.

6. 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.

7. 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 herein apply the legal principles enunciated in the above noted pronouncements.

8. Consequently, the writ petition is allowed and the order dated 30.5.2012 (Annexure P-10) passed by the respondent is set aside. The matter is 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.

9. This order shall also dispose of CM-9805-CWP-2017.

(AJAY KUMAR MITTAL)
JUDGE

September 28, 2018
gbs

(AVNEESH JHINGAN)
JUDGE

Whether Speaking/Reasoned	**Yes**
Whether Reportable	**Yes**