IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.10.2019
CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
Writ Petition Nos.9510 and 9511 of 2011,
5030 and 5031 of 2013 and 8201 of 2012
and M.P.Nos.1 and 1 of 2011,1 and 1 of 2013 and 1 of 2012

Hindustan Engineering Training Centre,
rep. By its President
40, GST Road
St. Thomas Mount
Chennai - 600 016.

...Petitioner in W.P.Nos.9510 of 2011 and 5030 of 2013

Hindustan Institute of Technology and Science
rep. By its President
40, GST Road
St. Thomas Mount
Chennai - 600 016.

...Petitioner in W.P.Nos.9511 of 2011 8201 of 2012 and 5031 of 2013

Vs

1. The Chief Commissioner of Income Tax -III
121, Mahatma Gandhi road,
Chennai - 600 034.

2. The Director of Income Tax (Exemptions)
121, Mahatma Gandhi road,
Chennai - 600 034.

3. The Deputy Director of Income Tax (Exemptions) II
121, Mahatma Gandhi road,
Chennai - 600 034.

... Respondents in the above W.P.s

W.P.No.9510 of 2011:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for records of the petitioner on the file of the respondent to quash the impugned order dated 30.9.2010 issued in C.No.CC III/6/10(23C)/2010-11 in refusing/rejecting the renewal of recognition sought for in terms of section 10 (23C)(vi) of the Income Tax Act, 1961 for the assessment year 2010-2011 and consequently direct the respondent to grant such recognition as prayed for.

W.P.No.9511 of 2011:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for records of the petitioner on the file of the respondent to quash the impugned order dated 28.9.2010 issued in C.No.CC III/7/10(23C)/2010-11 in refusing/rejecting the renewal of recognition sought for in terms of section 10 (23C)(vi) of the Income Tax Act, 1961 for the assessment year 2010-2011 and consequently direct the respondent to grant such recognition as prayed for.

W.P.No.8201 of 2012:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for records of the petitioner on the file of the respondent to quash the impugned order dated 27.10.2011 issued in C.No.CC III/7/10(23C)(vi)/11-12 in refusing/rejecting the renewal of recognition sought for in terms of section 10 (23C)(vi) of the Income Tax Act, 1961 for the assessment year 2011-2012 and consequently direct the respondent to grant such recognition as prayed for.

W.P.No.5030 of 2013:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for records of the petitioner on the file of the respondent to quash the impugned order dated 26.9.2012 issued in C.No.CCIT III/10(23C)/10/12-13 in refusing/rejecting the renewal of recognition sought for in terms of section 10 (23C)(vi) of the Income Tax Act, 1961 for the assessment year 2012-2013 and consequently direct the respondent to grant such recognition as prayed for.

W.P.No.5031 of 2013:

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for records of the petitioner on the file of the respondent to quash the impugned order dated 26.9.2012 issued in C.No.CCIT III/10(23C)(vi)/9/12-13 in refusing/rejecting the renewal of recognition sought for in terms of section 10 (23C)(vi) of the Income Tax Act, 1961 for the assessment year 2012-2013 and consequently direct the respondent to grant such recognition as prayed for.

For Petitioner in the above W.Ps : Mr.A.S.Sriraman
For Respondent in the above W.Ps : Mrs.Hema Muralikrishnan

COMMON ORDER

This batch of five Writ Petitions have been filed by two Petitioners, viz., i) Hindustan Engineering Training Centre (W.P.Nos.9510 of 2011 and 5030 of 2013 relating to Assessment Years (A.Y.) 2010-11 and 2012-13) and ii) Hindustan Institute of Technology and Science (W.P.Nos.9511 of 2011, 8201 of 2012 and 5031 of 2013 relating to A.Y. 2010-11, 2011-12 and 2012-13).

2. In all Writ Petitions, the petitioners challenge orders of rejection of the applications filed by them seeking approval in terms of section 10(23c)(vi) of the Income Tax Act, 1961 (in short 'Act').

3. The petitioner is a society established under the provisions of the Tamil Nadu Societies Registration Act, 1975. The objects of the Society as at present are as follows:

> 'a) To provide for instruction and training in such branches of learning as it may deem fit with a view to impart eduction at Diploma, Under Graduate, Post Graduate and above higher levels.
>
> b) To provide for research and for the advancement of and dissemination of knowledge.
>
> c) To undertake extra mural studies, extension programmes and field outreach activities to contribute to the development of institution like instruction, training and conduct of courses at various levels in the field of Engineering, Technology, Aviation, Management, Arts and Science, Medical, Dental, Paramedical, Nursing, Pharmaceutical Sciences, agriculture, Veterinary, Hospitality Management, Travel Tourism, legal studies, oriental/ancient Arts & Science, Indian Philosophy, heritage, Arts & Cultural etc. in India and abroad asper rules and norms.
>
> d) To do all such other acts and things as may be necessary or desirable to further the objects of the Institution.
>
> e) To take over any institution, institution or trust having objects similar to that of the institution in the advancement of its objects.
>
> f) To impart training and instructions in practical professional areas'

4. The petitioner has set up and manages several Universities, Schools and Educational campuses in different parts of the Country and sought an approval for exemption in terms of Section 10(23C)(vi) of the Act for the income earned therefrom.

5. As far as W.P.No.9511 of 2011 is concerned, the application came to be rejected by the Commissioner of Income Tax (R3) who notes in the narration that a survey under Section 133A of the Act had been conducted in the petitioners' premises during which various incriminating documents had been found. However, he clarifies that since the issues arising therefrom were still under investigation, no adverse inference had been drawn in that regard.

6. The reason for rejection of the exemption claimed is that one of the objects contained in the Memorandum of Association (MOA) was, according to R3, of the nature of 'general public utility' and not 'education'. This, he states, is contrary to the stipulation of Section 10(23C) which requires that the entity seeking exemption exists solely for educational purposes. The offending clause of the MOA, i.e., clause 3(c) includes 'undertaking extra mural studies, extension of programs and field outreach activities to contribute to the development of society' as an object.

7. Despite objections raised by the petitioner to the effect that the clause did not, militate against the grant of exemption claimed, and, in any event, has not been pursued in reality, the petitioner was held to be ineligible for the grant of approval as sought.

8. This issue is common to W.P.No.8201 of 2012 as well.

9. A specific query was put to learned counsel as to what an 'extra mural course' entailed and the petitioner has circulated a guideline issued by the University Grants Commission for the purpose of declaring an Institution as a 'Deemed University' under Section 3 of the University Grants Commission Act. Serial No.4(a) thereof states:-

> '4(a) For the purpose of recognition as a university an institution should generally be:
>
> (i) Engaged in teaching programmes and research in chosen fields of specialisation which are innovative and of very high academic standards at the Master's (or equivalent) and/or research levels. It should also have a greater interface with society though extra mural, entension and field action related programmes.'

10. The contention of the petitioner is the aforesaid was a prescribed guideline, though not a mandatory one and hence the petitioner following prudence, included the same in its objects as well. He reiterates the position that, in fact, no extra mural courses have been conducted by the University at any point in time. This factual submission is recorded. Be that as it may, if at all it does come to the notice of the Assessing Authority that the petitioner was, in fact, engaging in activities that are outside the scope of education, the Officer

is always at liberty to address the same in the course of assessment.

11. The scope of enquiry when granting approval in terms of Section 10(23C)(vi) of the Act has been considered by the Supreme Court in two Judgments, viz., i) Queen's Education Society V. Commissioner of Income Tax (372 ITR 699) and ii) American Hotel and Lodging Association, Educational Institute V. CBDT (301 ITR 86).

12. The Bench has specifically noted the distinction between satisfaction in regard to prima facie conditions required for the grant of approval and the monitoring conditions relating to application/accumulation/deployment of income as well as other compliances. The Bench has stated that the grant of approval would only require a satisfaction of the Officer in regard to the existence of the University and the avowed objects. The question of whether the Society has, in fact, complied with the statutory provisions strictly is a matter of assessment and would be dealt with by the Assessing Officer in the course of assessment itself.

13. I am thus of the view that, the respondent has, in the impugned orders adopted a view that is premature and Writ Petitions in W.P.Nos.9511 of 2011 and 8201 of 2012 are allowed.

14. Coming to W.P.Nos.5030 and 5031 of 2013, the Assessing Authority rejects the exemption granted on the ground that the application in Form 56D was filed on 30.09.2011, as being relevant to Assessment Year 2012-13 and not for financial year 2010-11 as mentioned in the application. He also states that no evidence was filed by the petitioner to the effect that this error was subsequently corrected. Before the Commissioner, the contention of the petitioner was that there was a clerical mistake in relation to the year mentioned and the application would relate to year ending 31.03.2012 only.

15. In any event, even while holding the petitioners' applications not maintainable, the respondent considers the same on merits. According to him, the 14th proviso to Section 10(23C) requires that the application for approval be made on or before 30th of September of the relevant assessment year from which exemption is sought. Since 'assessment year' is defined under Section 2(9) of the Act to mean the period of 12 months commencing from 1st day of April every year, the claim would have, according to the respondent, to be made only between 01.04.2012 and 30.09.2012. The present application was made on 30.09.2011 and thus, according to him, was not maintainable.

16. I disagree. The 14th proviso to Section 10(23) was amended by Finance (No.2) Act, 2009 with effect from 01.04.2009. The notes and clauses to the Finance Bill (see 314 ITR 130 (ST.)) state that the insertion of the proviso was to permit applications to be filed upto 30th September of the

relevant assessment year, instead of restricting the date to 31st of March of the financial year. The purpose was thus to expand the time for filing till 30.9.2012 and not restrict it to only the six months between 1.4.2012 and 30.9.2012. In the present case, the application has been filed in November, 2011 itself and in the light of the object of the amendment noticed above, the application is well within time. W.P.Nos.5030 and 5031 of 2013 are allowed.

17. In W.P.No.9510 of 2011, the impugned order rejects the petitioners' claim upon consideration of clauses (c) and (d) of the MOA, wherein the petitioner deals with the acquisition or lease of immovable properties as well as investment of funds in the equity of any company or any other organisation that, according to the respondent, establish that the society did not exist solely for 'educational purpose' as required under Section 10(23C). The clauses are extracted below for better appreciation:

> '(c) To acquire properties both movable and immovables.
>
> (d) To invest funds of the society in the equity of any company or any other organisation and advance funds for the promotion and advancement of any of the main or further object herein, or further objects as recorded in the Articles of Association.'

18. The purpose of the aforesaid clauses is, in my view, only to enable the acquisition of assets by the petitioner. This does not, in my view, lead to the inference that the Society is engaging in other commercial ventures apart from dissemination of education. As stated elsewhere, the monitoring of the activities of the petitioner is a matter of assessment by the Assessing Officer and the Commissioner has, in my view, overstepped in assuming that the mere mention of the aforesaid two activities disentitles the petitioner to the approval and exemption sought.

19. The impugned order is set aside and W.P.No.9510 of 2011 is allowed. The respondent is directed to issue the approvals, as sought for within a period of four weeks from date of issue of this order. No costs. Consequently, the above connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Commissioner of Income Tax -III
   121, Mahatma Gandhi road,
   Chennai - 600 034.

2. The Director of Income Tax (Exemptions)
   121, Mahatma Gandhi road,
   Chennai - 600 034.

3. The Deputy Director of Income Tax (Exemptions) II
   121, Mahatma Gandhi road,
   Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan , Advocate SR.No. 89722
+2ccs to Mr.S.Sridhar , Advocate SR.No. 89708 89707

Writ Petition Nos.9510 and 9511 of 2011,
5030 and 5031 of 2013 and 8201 of 2012
and M.P.Nos.1 and 1 of 2011,1 and 1 of 2013 and 1 of 2012

A.SK(06/02/2020)