

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.9.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Tax Case (Appeal) No.467 of 2017

Commissioner of Income Tax,
Trichy.

Appellant

Vs.

Sengunthar Matriculation Higher
Secondary School,
Omalar Main Road, Tharmangalam,
Omalar Taluk, Salem 636 502.

Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 19.2.2016 made in ITA No.2008/Mds/2015.

Against the order of order of the Chief Commissioner of Income Tax Trichy, dated 12.08.2015 C No.935(T) CCIT/TRY/2014-15.

For Appellant : Mr.J.Narayanasamy
Senior Standing Counsel

For Respondent : Mr.Hariprashanth for
Mr.Niranjan Rajagopalan

JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

Heard the learned Senior Standing Counsel Mr.J.Narayanasamy appearing for the Appellant/Revenue and Mr.Hariprashanth, learned counsel appearing for the Respondent/Assessee.

2. The Revenue has filed this Tax Case under Section 260-A of the Income Tax Act aggrieved by the order passed by the Income Tax Appellate Tribunal on 19.2.2016 for the Assessment Year 2014-2015 allowing the Appeal of the Assessee, Sengunthar

Matriculation Higher Secondary School, Salem, which was filed against the order of the learned Chief Commissioner of Income tax, Trichy dated 12.8.2015 for the Assessment Year 2014-2015 and directed the learned Commissioner to grant exemption to the Appellant/Assessee School under Section 10(23C)(vi) of the Income Tax Act, 1961.

3. The following is the substantial question of law sought to be raised by the Revenue:-

"Whether on facts and circumstances of the case and in law, Tribunal was right in directing the Chief Commissioner of Income Tax to grant the approval for exemption u/s.10(23C)(vi) of the Act?"

4. The relevant portion of the order passed by the learned Tribunal is extracted hereunder for ready reference:-

"4. We have heard both the parties and perused the material on record. It is admitted fact that the assessee was granted permission to run the school by the Director of School Education Chennai dated 07.10.1997 vide R.C.No.91778/E-4/1997. Under this permission the assessee was granted permission to open Matriculation School at Tharamangalam, Salem District for classes standard 1st to 7th standard during the year 1966-1967. Again by proceedings dated 21.02.2007 in M.M.No.8064/E-5/2005, the school has been granted further permission confirming the earlier permission and granting extension of classes from 1st to 12th Standard from 01.07.2005 to 30.06.2008. Further by another certificate of Recognition dated 29.12.2014 in proceedings No.5526/A-1/2014, the permanent recognition has been granted from L.K.G to 8th Standard for the period 01.06.2014 to 31.05.2017 and for the 9th to 12th Standard from the same period recognition granted from 01.06.2014 to 31.03.2017. It is also admitted fact that the present assessee has been filing the return of income under the status of 'AOP' (Educational Institution). Now the objection of the Department is that the assessee is not having independent existence with clear cut objectives. As such it cannot be considered for granting exemption u/s.10(23C)(vi) of the Act and also it was alleged that huge amount is due from Sengunther Education Board to the assessee and

the assessee was not owning any building and it was functioning from rented premises taken from Sengunther Education Board to whom the assessee is paying rent Rs. 5 000/-per annum to them. However, there is no allegation from the Chief Commissioner of Income Tax that the assessee does not exist solely for educational purpose and for the purpose of profit as such the assessee would fall under the provisions of Section 10(23C)(vi) of the Act.

4.1 Section 10(23C)(vi) reads as follows:-

"(vi) any university or other educational institution existing solely for educational purposes and not for the purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or"

Further it is appropriate to provision of section 10(23C)(iiiab) and sub-clause (iiiad) which reads as follows:-

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

The primary condition u/s.10(230)(vi), the assessee shall exist solely for educational purposes and not for purposes of profit. The Chief Commissioner of Income Tax without observing that the assessee not solely existing for educational purpose, he went on proposition that the assessee is not having Memorandum of Association or Trust deed so as to carry on the function of the assessee. But the fact brought on record suggests that the assessee is an "AOP", managed by Sengunther Education Board which is a registered body under the Society Registration Act in the year 1946 vide Registration No.S/8/1946. The above education board is managing the assessee school with the committee Members of the said Education Board and constituted the office Bearers of the institution and duly filing the return of

income. It is to be observed that there is no expressed definition for "Institution" under the Income Tax Act. Hence, we have to consider the General meaning defined in the Webster's New Dictionary, the word "Institution" means an established or organized Society or Corporation, an establishment, especially one of Public Character, or one effecting a community; a Foundation. Further, this Tribunal, Delhi Bench 'G' Bench. in I.T.A.No:3360(DEL) of 2008 dated 30.04.2010 in deciding the Appeal in the case St Thomas Girls Senior Secondary School, New Delhi Vs. Director of Income Tax(Exemption), New Delhi have held that the word Institution is wide enough to include a school which has been established for imparting Education. Merely because the Assessee School does not have power to purchase, acquire, or sell the property, does not mean that the school will cease to exist as an Institution. Thus the 'STATUS' of the Assessee could be A.O.P. in the absence of any Memorandum of Association or Trust Deed. Considering the above decision of the I.T.A.T. Delhi Bench, in the present case also the above Matriculation School which is managed by Education Board and granted permission by the Director of School Education as early as 07.10.1997 is an "Institution" qualifying for exemption U/s. 10(23C)(vi) of the I.T. Act. Hence the exemption sought for the above "Institution" is to be granted. Accordingly, we direct the CCIT to grant exemption u/s.10(23C)(vi) of the Act.

5. " In the result, the appeal of assessee is allowed."

5. The learned counsel for the Appellant Mr.J.Narayanasamy urged before us that since the Assessee School is controlled by the Sengunthar Education Board, which is a separate Society registered under the Societies Registration Act, that Board alone could have applied for exemption under Section 10(23C) of the Act and the School or the Institution run by the said Board or the Assessee itself could not apply for such exemption and therefore, the learned Commissioner was justified in refusing such exemption by order dated 12.8.2011. He submitted that without independent Constitution, Bye Laws or Document registered with the Competent Authority, the Educational Institution or the School could not claim an independent exemption under Section 10(23C) of the Act. He relied upon the following observation of the learned Chief Commissioner in the impugned order dated:-

"It is seen, that the assessee Sengunthar Matriculation School is being shown as AOP (Educational Institution). It is claimed to be engaged only in the activity of running Educational Institution which is a non profit objective. It is seen this that the school is totally controlled by Sengunthar Education Board which is registered under the Society Registration Act. The Secretary and Assistant Secretary of this school are appointed by Sengunthar Educational Board, which is the separate entity of its own. No memorandum of the Association or the Articles of the Schools of bye laws exists for the school. There was zero corpus for the start of the school. For Regulation purposes, permission has been taken from the Director of School Education, Chennai. In the absence of any objective in constitution of the AOP, school cannot be said to be existing only for educational purpose.

In fact, as per the copy of the Balance sheet as on 31.3.2013 of record, the assessee has shown sundry debtors of Rs. 60,38,541/-. Out of sundry debtors of Rs. 60,38,541/-, 59,08,221/- is due from Sengunthar Education Board (Society is controlling the school). A sum of Rs. 1,30,320/- is due to Sengunthar Higher Secondary School. It is seen that huge amount is due from controlling society viz. Sengunthar Educational Board. Independent existence of assessee's school vide separate memorandum, article, bye laws is not proved at all.

Following ratio of the decision of Honourable Supreme Court in American Hotel & Lodging Association reported in 301 ITR 86, they should fulfil threshold conditions before the grant of registration/exemption, "solely" means exclusively and not primarily as held in New Noble Education Society vs. CCIT reported in 334 ITR 303 (AP).

Conclusion:

Since the assessee is not having independent existence with clear cut objectives, it cannot be considered for granting exemption. It is, further seen, that the school is totally controlled by Sengunthar Educational Board. The huge amount is due from Sengunthar Educational Board to the assessee's school. Even the school building is owned by Sengunthar Education Board to whom rent of Rs. 5000 PA is paid by the

school.

In view of these facts, circumstances and status, Application is hereby rejected for the application u/s 10(23C)(vi) of the I.T. Act, 1961."

6. Per contra, the learned counsel Mr. Hariprashanth representing Mr. Niranjan Rajagopalan supported the impugned order of the learned Tribunal. He submitted that there is no requirement for the Assessee to file an Application under section 10(23C) of the Act to be registered with the Respondent as it is duly registered with the Educational Authorities of the State and are undertaking educational activities and therefore, they are entitled to exemption under Section 10(23C)(vi) of the Act.

7. Having heard the learned counsels appearing for the parties, we are not inclined to admit the present Appeal as we find that no substantial question of law arises in the present Appeal filed by the Revenue. The position of law is very clear. The provisions of Section 10(23C) of the Act to the relevant extent applicable to this Appeal is quoted below for ready reference:-

"(23C) any income received by any person on behalf of --

.....
(iiiab) any university or other educational institution existing solely for educational purpose and not for purposes of profit, and which is wholly or substantially financed by the Government; or

.....
(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

.....
(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or"

8. Undisputedly, the Assessee has been filing its Return of income as Association of Persons (Educational Institution) with the Respondent/Income Tax Department. The Assessee (AOP) is also undisputedly covered by the definition of 'Person' as defined in Section 2(31) of the Act which provision is also

quoted to the relevant extent below:-

"person" includes --

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation.-- For the purposes of this clause an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains."

9. Since the AOP is recognised as a "person" for the purpose of Income Tax Act, 1961 and Section 10(23C) of the Act also grants exemption to a person engaged in deriving income from specified sources including the University or Educational Institution, covered by this provision and on these facts, there is no dispute before us that the appellant Educational Institution was duly registered with the State Registered Authorities and was only engaged in the educational activities. Therefore, we do not find any reason to deny the exemption or registration under Section 10(23C) of the Act which was denied by the learned Chief Commissioner.

10. In our opinion, the Tribunal has rightly discussed the relevant provisions of the Act and finding that the Appellant Educational Institution is undoubtedly, an "Institution" covered by the provisions of Section 10(23C)(vi) of the Act and therefore, as an AOP, it was entitled to exemption irrespective of the fact whether it had separate registration under other law as an Institution or Society or not. The requirement of the Applicant being a registered Body or juristic person is not there in Section 10(23C) of the Income Tax Act. The definition of 'Person' who is entitled to exemption under Section 10(23C)(vi) of the Act is clear enough and it specifically covers Association of Persons (AOP), which need not be a registered Body. The Income Tax Act recognizes certain types of Assesseees which do not have any independent juristic existence like Corporate or individuals viz., Hindu Undivided Family (HUF) and Association of Persons (AOP), who are entitled to maintain their Books of Accounts and file their Returns of Income in their own capacity and can be

assessed as such in that capacity.

11. The submission made on behalf of the Revenue that unless the Applicant under Section 10(23C) of the Act is independently registered, the Revenue may not have control over it is fallacious, since the Appellant/Assessee is admittedly filing its Returns of Income as AOP. So long as the Assessee adheres to the parameters required to be satisfied under Section 10(23C) of the Act to avail the exemption granted under the provision, it is so entitled. Therefore, unless the finding of facts are given on the basis of evidence that the Assessee does not meet the parameters of Section 10(23C) of the Act, the exemption claimed by the Assessee cannot be denied on the ground that it does not have independent Memorandum of Association, Bye laws, etc. and this is not a sustainable ground to deny the exemption as required under Section 10(23C) of the Act and the definition of "person" under Section 2(31) as quoted above.

12. Therefore, in our considered opinion, the learned Tribunal has not committed any error in reversing the order of the learned Chief Commissioner and directing the grant of exemption to the Appellant/Assessee under section 10(23C)(vi) of the Act.

13. We do not find any substantial question of law to be arising in this matter and requiring our further consideration and therefore, we do not find any merit in the present Appeal filed by Revenue and the same is liable to be dismissed and accordingly, it is dismissed. No order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Ssk.

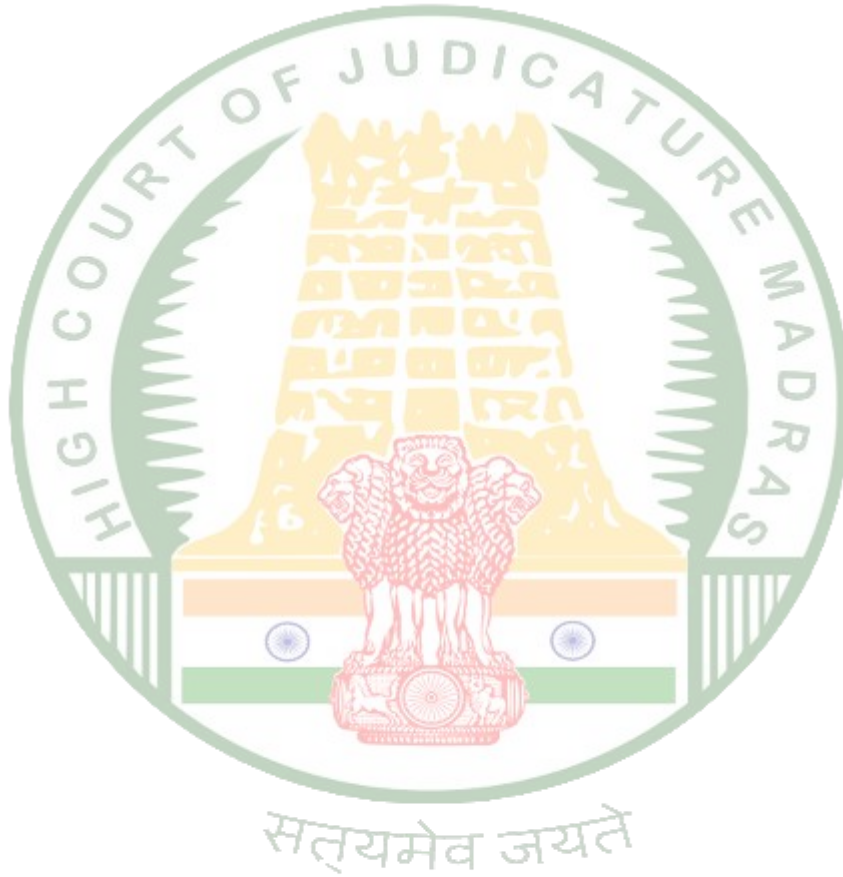
To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan,
'A' Bench, Chennai-90
2. The Commissioner of Income Tax,
Trichy.

3. The Chief Commissioner of
Income Tax,
44, William Road,
Cantonment, Tiruchirappalli.

T.C. (A) No.467/2017

MG (CO)
GN (02/11/2020)



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