

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.35 of 2007

Commissioner of Income Tax, Appellant
Bhubaneswar

Mr. R. Chimanka, Senior Standing Counsel along with
Mr. A. Kedia, Junior Standing Counsel
for the Revenue Department

-versus-

Orissa Trust of Technical Education & Respondent
Training, Bhubaneswar, Khurda

Mr. Jagabandhu Sahoo, Senior Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
23.03.2022

Order No.

Dr. S. Muralidhar, C.J.

13. 1. The present appeal by the Revenue is directed against an order dated 1st December, 2006 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) dismissing the Revenue's IT(SS)A No.31/CTK/2001 for the Block Assessment Year (BAY) 1st April 1998 to 25th February, 1999.

2. While admitting this appeal on 20th April 2017, this Court framed the following questions of law for consideration:

“(i) Whether on the facts and in the circumstances of the case, the order of the learned ITAT was erroneous in law in so far as its finding that there was no material to controvert the conclusion of CIT(A) was perverse, having been arrived at without any evidence

and in total disregard, inter alia of the written submission filed by the Department.

(ii) Whether on the facts and in the circumstances of the case, the order of the learned ITAT was erroneous in law in failing to take judicial notice of the fact that the order of CIT(A) upheld by it, referred to and relied on provisions of Sec.10(23C)(vi) introduced only w.e.f. 1. 4.1999.

(iii) Whether on the facts and in the circumstances of the case, the order of the learned ITAT was erroneous in law in upholding the order of the CIT(A) without taking due judicial notice of the fact that the order of CIT(A) did not give any findings on the merit of the order u/s 158BC when passing of such an order was mandatory for the AO in view of the Chapter XIV-B.”

3. This Court has heard the submissions of Mr. Radheshyam Chimanka, learned Senior Standing Counsel for the Revenue and Mr. Jagabandhu Sahoo, learned Senior Counsel for the Assessee.

4. The Court would like to first discuss question (ii) regarding reliance placed by the Commissioner of Income Tax (Appeals) [CIT (A)] on Section 10 (23C) (vi) of the Income Tax Act, 1961 (Act), which was introduced with effect from 1st April, 1999.

5. Both before the ITAT as well as this Court, the Revenue sought to project the reliance placed on the above provision by the CIT (A) as being erroneous since the provision came into effect only on 1st April 1999 whereas the block assessment was for a period of six years up to 28th February, 1999.

6. The Court notes that prior to its re-enactment as Section 10 (23C) (vi) of the Act, the very same provision existed in the statute book as Section 10 (22) of the Act. In other words, what was in fact referred to both by the Assessing Officer (AO) and the CIT (A) as far as the present case is concerned, was Section 10 (22) of the Act and not Section 10 (23C) (vi) of the Act. The latter provision was mentioned as Section 10(22)/10(23C) (vi) only to indicate that the same provision has been reenacted as Section 10 (23C) (vi) of the Act with effect from 1st April, 1999. This is not to say that reliance is placed on the re-enacted provisions. Consequently, as far as Question No.(ii) is concerned, the Court finds nothing erroneous in the order of either the CIT (A) or the ITAT. The issue is decided in favour of the Assessee and against the Department.

7. Turning now to Questions (i) and (iii), the background facts are that a search and seizure operation was undertaken in the premises of the Assessee-Trust on 25th February 1999 under Section 132 of the Act. On the same day, a search and seizure operation was conducted in the residential premises of K. Bhagat, the Managing Trustee and Smt. A. Panda, one of the trustees of the Trust. The AO in an elaborated assessment order dated 28th February 2001 under Section 158 BC (c) of the Act, the AO proceeded to make additions to the income of the Trust on the basis of the amount seized as cash during the search. The taxable income of the Trust was determined as Rs.1,83,59,682/-.

8. On appeal by the Assessee-Trust, the CIT (A) by the order dated 15th June, 2001 set aside the order of the AO accepting the plea of the Trust that its income was exempt under Section 10 (22) of the Act. This order of the CIT (A) has been concurred with by the ITAT.

9. The Court finds that an elaborate discussion has been made of the materials on record by the CIT (A) and convincing reasons have been given in its order for reversal of the assessment order of the AO. The short question that had to be addressed was whether the income earned by the Trust was exclusively from educational activities. The reasons that weighed that the CIT (A) for coming to its conclusion were as under:

(i) The Trust was created for the purposes of imparting training in computers and management education. It had received recognition from the Department of Electronics, Government of India as well as approval from the AICTE. The State Government had also granted its recognition and the Utkal University had granted affiliation to the Institutes of the Trust.

(ii) It had received commendation certificates from the Government of India and one of its branches was entrusted with the job of preparing course curriculum and syllabus for the Utkal University keeping in view the infrastructure facilities like R&D and performance of its students in different examinations.

(iii) It was factually held that the first two wings of the Assessee-Trust were engaged solely in imparting education and its R&D wing helped in updating its curriculum keeping in view the latest

developments in the country and in the world in the field of computers and management sciences.

(iv) Importantly, the finding was “the usufruct of the trust has not flown to the Managing Trustee or other Trustees”.

10. The CIT (A) also found that sufficient explanation had been offered by the Assessee in regard to the cash credits as being from course fee collected in advance and which had been duly entered into the books of account. Likewise, there was sufficient explanation for the source of investment for the purpose of Section 69 of the Act. Even as regards the cash found during the course of search, it was found to have been added in the income of the individuals from whose residence it was recovered. Therefore, the said cash amount could not have been added to the income of the Trust.

11. The AO had, while acknowledging that the Assessee was an Educational Institution solely for the purpose of imparting computer education, observed in the passing that “it cannot be said that the Trust is not carrying out activities not involving profit”. This was in the nature of surmise and conjuncture and not based on any factual determination.

12. Mr. Chimanka, learned Senior Standing Counsel for the Revenue, referred to the observations in the order of the AO, but was unable to point out any serious error in the order of the CIT (A) or the ITAT. In fact the CIT (A) has discussed elaborately the

materials on record including the submissions of the Revenue. Likewise, the ITAT has discussed both the submissions of the Revenue as well as the Assessee. Apart from the fact that the issue involves pure questions of fact, the Court finds that no serious legal infirmities have been pointed out in the order either of the CIT (A) or the ITAT.

13. Mr. Chimanka placed reliance on certain observations of this Court in its judgment dated 24th November 2011 in W.P.(C) No.2467 of 2011 (*Xavier's Institute of Management v. State of Orissa*). The challenge in that petition was to an order passed by the Chief Commissioner of Income Tax, Bhubaneswar (CCIT) refusing approval to the Institution under Section 10(23C)(vi) of the Act and the subsequent order of the CCIT under Section 154 of the Act. Apart from the fact that the present case does not involve grant of approval by the CCIT, the general proposition in law that the word 'solely' appearing in Section 10(23C)(vi) of the Act emphasizes that the income of the Institution has to be from activities which are solely educational and not commercial activities, if the income has to be exempted from tax. This Court was reiterating the settled legal position in this regard as explained by the Supreme Court of India in *Aditanar Educational Institution v. Additional Commissioner of Income Tax (1997) (224) ITR 310 (SC)* followed in *American Hotel and Lodging Association Educational Institute v. Central Board of Direct Taxes, 2008 (301) ITR 86 (SC)*. The decision of the High Court of Punjab and Haryana in *Pinegrove International Charitable Trust v. Union of*

India, 2010 (327) ITR 73 (P & H) and of this Court in ***The Commissioner of Income Tax v. Silicon Institute of Technology, 2015 (370) ITR 567 (Ori)*** are all to the same effect.

14. While the legal position is clear, each of these cases turned on the peculiar facts on whether the income earned by the institution involved in those cases was from activities which were solely and exclusively 'educational'. In the present case, the concurrent findings of the CIT (A) and the ITAT that the income earned by the Assessee was from solely educational activity and not commercial activity appears to be based on a proper analysis of all the materials available on record and, therefore, the Court is unable to agree with the contention of the Revenue that either order requires interference. Questions Nos. (i) and (iii) are answered accordingly in favour of the Assessee and against the Revenue.

15. As a result the appeal is dismissed, but in the circumstances, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

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