

IN THE HIGH COURT OF ORISSA AT CUTTACK**WRIT PETITION (CIVIL) No.28803 of 2013**

***Orissa Trust of Technical Education
and Training***

Petitioner

-versus-

***The Chief Commissioner of Income
Tax, Orissa Region, Bhubaneswar
and another***

Opposite Parties

Advocates appeared in this case:

For Petitioner : Mr. Jagabandhu Sahoo
Senior Advocate

For Opposite Parties : Mr. R.S. Chimanka
Senior Standing Counsel

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK**

**JUDGMENT
26.04.2022**

Dr. S. Muralidhar, C.J.

1. The Orissa Trust of Technical Education and Training has filed this petition challenging an order dated 5th October, 2012 passed by the Chief Commissioner of Income Tax (CCIT), Orissa, Bhubaneswar (Opposite Party No.1) declining to grant exemption to the Petitioner-Assessee under Section 10 (23C) (vi) of the Income Tax Act, 1961 (Act) for the financial year (FY) 2008-09.

2. This is a second round of litigation at the instance of the Petitioner seeking a similar relief. Earlier the Petitioner had filed W.P.(C) No.2444 of 2011 questioning an order dated 30th September, 2010 passed by the CCIT. While setting aside the said order by a judgment dated 31st July, 2012 disposing of the above writ petition. This Court remanded the matter to the CCIT to reexamine the case of the Petitioner in light of the observations of the said judgment.

3. The background facts are that the Petitioner is a Trust registered by virtue of a trust deed dated 3rd July, 1993 subsequently rectified on 23rd August, 1993 and finally on 7th May, 1998. The object of the Trust is to impart scientific and technical education and research facilities. It is stated that pursuant thereto, the Petitioner established two educational institutions with the intention of providing higher education and without any profit motive. One is the Bhubaneswar Institute of Management and Information Technology and the other one is Indian Institute of Science and Information Technology (IISIT). An application in Form 56-D was made by the Petitioner for the FY 2008-09 for grant of exemption under Section 10 (23C) (vi) of the Act on 23rd September, 2009. While adjudicating the said claim, the CCIT required the Commissioner of Income Tax, Bhubaneswar (CIT) (Opposite Party No.2) to make an enquiry and submit a report on the activities of the Petitioner. The CIT then visited the two institutions, examined the records and submitted an enquiry report.

4. The Petitioner states that it received a notice from CCIT calling upon it to produce the following documents:

“(i) The manner of receipt of fees and head of receipt from the student and the Books of Account.

(ii) The copy of the notification of the Government of Orissa Industry department prescribing the fees structure.

(iii) The copy of the audit report showing the details of expenditure made for imparting education to the students.

(iv) The copy of the letters of approval of the said two Institutions of the petitioner granted by the A.I.C.T.E.”

5. According to the Petitioner, after production of the documents for verification by the CCIT, the Petitioner also explained how the two institutions were working and that the receipt of fees by them was in accordance with the Government rules and norms. According to the Petitioner, the fees collected for ‘Placement and Training’ are part and parcel of the educational activities for which the fees structure has also been prescribed by the AICTE and Industry Department of the Government of Odisha.

6. On 30th September 2010 the CCIT rejected the prayer of the Petitioner on the ground that the Petitioner-Trust did not exist solely for educational purposes; it had been created with other aims and objectives which were clearly in the nature of business. Further, according to the CCIT, on verification of the audited income and expenditure statements for the FY's 2008-09 and 2007- 08, it was seen that the Petitioner was engaged in non-

educational activities like horticulture and was generating income from such activity. According to the CCIT, the Petitioner had collected fees under the head 'Placement and Training' from the students which was not in conformity with the fees prescribed. The CCIT concluded, after referring to the judgment of the Supreme Court of India in *Islamic Academy of Education v. State of Karnataka (2003) 6 SCC 697* that any amount, which was charged other than the fee prescribed by the Committee on any head would amount to capitation fees.

7. When the above order dated 30th September 2010 was challenged before this Court in W.P.(C) No. 2444 of 2011. This Court in its judgment dated 31st July, 2012 was of the view that CCIT had to determine whether the collection of money by the Petitioner under the head "placement and training" was indeed for educational purposes and how the income earned under the said head was utilised that is, whether for educational purposes or non-educational purposes. It is with this in mind that this Court remanded the matter to the CCIT for a fresh examination.

8. Pursuant to the above judgment dated 31st July, 2012 of this Court, the CCIT again examined the Petitioner's application and has passed the impugned order dated 5th October, 2012 maintaining the earlier decision to reject the Petitioner's request for exemption under Section 10 (23C) (vi) of the Act. In the first instance, the CCIT examined the issue of 'fees collected under the head 'Placement and Training' for the FY 2008-09. The CCIT

examined the Ledger account, and noticed that the Assessee had collected fees at Rs.4000/- from most of the students and Rs.5000/- from as many as 23 students. This appeared to be in excess of fees prescribed both for MBA and MCA students. The reconciliation statement furnished by the authorised representatives (ARs) of the Petitioner showed that fees amounting to Rs.12,14,000/- had been collected under the head 'Placement and Training' which did not match with the amount of Rs.11,94,000/- reflected in the ledger account. It could not be proved by the Petitioner with supporting evidence that the excess fees collected was in advance for the next year and had been duly adjusted in the next year's fees from the concerned students. Thus, it was concluded that the Petitioner has failed to prove the fees collected by it under the head 'Placement and Training' was in consonance with the notification of the Government of Odisha in this regard.

9. The CCIT next drew attention to the utilisation of the fees collected under the head 'Placement and Training'. Here, it was noticed from the ledger account that the expenditure incurred during FY 2008-09 amounted to Rs.7,31,189/- which was the direct expenses for Placement and Training and the balance had been spent under different heads as indirect expenses, which amounted to Rs.4,62,811/-. Thus, it was concluded that a substantial amount had been spent towards 'fooding/hostel room rent/purchase of memento etc.', which "cannot be treated as expenditure incurred solely for educational purpose." It was then

concluded that the explanation offered by the Petitioner for the incidental expenses “towards fooding, memento etc. was vague and non-specific”. The CCIT held that the Petitioner had failed to establish any direct nexus between the above expenditure and the object of providing education to the students from whom it had collected fees. Thus, the Petitioner had failed to establish that the entire amount of Rs.11,94,000/- collected under the head ‘placement and training’ had been spent ‘solely’ for education.

10. This Court has heard the submissions of Mr. Jagabandhu Sahoo, learned Senior Counsel appearing for the Petitioner and Mr. R.S. Chimanka, learned Senior Standing Counsel for the Department.

11. Mr. Sahoo, referred to the petition and the connected documents and submitted that the CCIT was in error in concluding that the sum collected towards Placement and Training was not solely for educational purposes. He referred to the order dated 1st June, 2007 of the Supreme Court of India in SLP (Civil) No.10318 of 2007 and the fact that pursuant thereto, the Government of Odisha had enacted the Odisha Professional Education Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 (‘2007 Act’). In terms of the above order of the Supreme Court in the subsequent order dated 18th June, 2007 in Civil Appeal No.2872 of 2007, a Fee Structure Committee was required to be constituted for determination of fee. The said Committee had recommended the fees under different heads,

which could be charged for the academic session 2007-08. Under clause (1) a ceiling limit was fixed for certain costs, which could be levied including placement fee by institutions. It is pursuant thereto that the notification was issued by the Government of Odisha on 12th July, 2007 as regards the fees that could be charged from the students by the Petitioner institutions.

12. Mr. Sahoo submitted that for the purposes of Placement and Training, the Petitioner had to incur certain other expenses for in-house training and this included the salary cost as well as expenses like providing food to the trainers and students expenses for in-house faculty and visiting faculty, including their food, commuting, accommodation and allied expenses. He submitted that it was not justified on the part of the CCIT to construe a sum of Rs.4,62,811/- as being towards non-educational purposes. He also submitted that the collection of Rs.5000/- from 23 students in no way impaired the mandate of the notification dated 12th July, 2007 as regards the ceiling imposed. The receipt according to him, mentioned clearly the course which the student was pursuing i.e. MBA or MCA and the ledger account was also accordingly maintained. As regards the differential amount between Rs.12,14,000/- and Rs.11,94,000/- i.e. Rs.20,000/- he explained that this comprised the refund of excess collection of fee and that this amount had in fact been returned to the students. He further pointed out that CCIT had ignored the report of the CIT who had conducted a detailed enquiry and had also verified the accounts and documents maintained by the Petitioner.

13. Mr. R.S. Chimanka, learned Senior Standing Counsel appearing for the Department referred to the counter affidavit, in which the stand taken was that the Petitioner could not justify the collection of fees towards Placement and Training in the sum of Rs.4,62,811/- satisfactorily. This according to the Department must have a substantial sum and was collected not for educational purposes. The expenditure also was not strictly for educational purposes. He referred to the fact that the Petitioner could not furnish the details of the expenses, and therefore, the CCIT was justified in negating its claim for exemption under Section 10(23C)(vi) of the Act. He maintained that the collection by the Petitioner of the above amounts from the students was not in consonance with the notification dated 12th July, 2007 of the Government of Odisha. In other words, Mr. Chimanka stood by the order passed by the CCIT and pleaded that it required no interference.

14. The above submissions have been considered. To begin with, it must be noticed that this Court had remanded the matter to the CCIT for re-examination on two limited grounds; (i) the collection of fees by the Petitioner under the head 'Placement and Training' and (ii) the utilisation of that amount, and whether the collection and utilisation was solely for educational purposes.

15. No doubt, the CCIT went through the ledger account maintained by the Petitioner and found that to begin with the fee

charged from 23 students was Rs.5,000/- whereas for the remaining students it was Rs.4,000/-. No doubt that this was in excess for the fees collected. But it has been pointed out by the Petitioner that the sum of Rs.20,000/- which had been collected in excess was in fact refunded to the students and that explains the difference in the collection amount between Rs.12,14,000/- and Rs.11,94,000/-. This appears to be a perfectly plausible explanation and ought not to have been viewed adversely by the CCIT.

16. As far as utilisation of the fees is concerned, the Court is of the view that the CCIT has taken a rather narrow view of the possible expenses that could be incurred by institution in the process of imparting training. Recently, in the context of an application by a Trust which was created for the purposes of importing training in Computers And Management Education, this Court had an occasion to examine the correctness of the order of a CIT rejecting the request for exemption. In its order dated 23rd March, 2022 in ITA No. 35 of 2007 (*Commissioner of Income Tax, Bhubaneswar v. Odisha Trust of Technical Education and Training, Bhubaneswar*), this Court addressed the question whether the income earned by the trust was exclusively from educational activities. In that context, this Court observed after referring to the decision in *Aditanar Educational Institution v. Addl. CIT (1997) 224 ITR 310 (SC)*, which was followed in *American Hotel and Lodging Association Educational Institute v. Central Board of Direct Taxes (2008)*

301 ITR 86 (SC) that on the facts of that case, it could not be said that the income of institution was not solely from educational activity. It was observed “the general proposition in law that the word ‘solely’ appearing in Section 10(23C)(vi) of the Act emphasises that the income of institution has to be from activities which are solely educational and not commercial if the income has to be exempted from tax, was a settled position”.

17. The Court would also like to refer to the decision of the Supreme Court in *Aditanar Educational Institution (supra)* where it was observed in para 8 that "after meeting the expenditure if any surplus results incidentally, from the activity lawfully carried on by the educational institution" it will not cease to be one existing solely for educational purposes since the object is not to make profit. The decisive acid test was whether on an overall view of the matter, the object is to make profit. In evaluating or apprising the above, one should also bear in mind the difference between the corpus, the objects and the powers of the concerned entity.”

18. In *Addl. Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufacture's Association, 1980 (121) ITR 1 (SC)*, it was observed as under:

“17.....Every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity. The activity must however, be for profit in order to attract the exclusionary clause and the question therefore is

when can an activity be said to be one for profit? The answer to the question obviously depends on the correct connotation of the proposition "for". This proposition has many shades of meaning but when used with the active participle of a verb it means "for the purpose of" and connotes the end with reference to which something is done. It is not therefore enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. Profit-making must be the end to which the activity must be directed or in other words, the predominant object of the activity must be making of profit. Where the activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where, on the other hand, an activity is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in advancement of the charitable purpose of the trust or institution. Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to subserve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit making motive; the latter should not masquerade under the guise of the former."

19. It was further observed as under:

"17.....The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge, of

a trust or institution to so carry on the activity that the expenditure balances the income and there is not resulting profit.”

20. The dominant object test was reiterated and it was held under:

“19.... the manner in which the activity for advancing the charitable purpose is being carried on and the surrounding circumstances may clearly indicate that the activity is not propelled by a dominant profit motive. What is necessary to be considered is whether having regard to all the facts and circumstances of the case, the dominant object of the activity is profit-making or carrying out a charitable purpose. If it is the former, the purpose would not be a charitable purpose, but, if it is the latter, the charitable character of the purpose would not be lost.”

21. In the present case, when the facts are viewed in the light of the law explained by the Supreme Court in the above decisions, it is seen that the essential purpose of the Trust is to run both institutions on non-profit basis. That essential object does not appear to have changed. Secondly, the explanation offered for the incidental expenses as part of the imparting of training appears to be a plausible one. Too narrow a view could not have been taken of the purposes for which the expenses were incurred even if they were not strictly for educational purposes. They were for purposes incidental to the imparting of training and did not take away from the character of the institutions, which were essentially being run on a non-profit basis.

22. Consequently, the Court is of the view that neither the collection of the amount towards placement and training nor its utilisation by the Petitioner can be said to be in a manner that is not solely for educational purposes. There appears to be a sufficient nexus demonstrated by the Petitioner between the expenditure incurred on the incidental activities of providing food, lodging and transport and other facilities to the trainers, the trainees and the staff etc. and the object for which the Petitioner's institutions are operating. This cannot be completely separated from the essential activity of imparting education and training.

23. Consequently, the Court sets aside the impugned order of the CCIT and directs that an exemption will be granted to the petitioner from payment of tax under Section 10 (23C) (vi) of the Act for the FY 2008-09, the consequential orders shall be passed within a period of 4 weeks.

24. The petition is allowed in the above terms, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K.Jena/Secy.