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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-61-2024 (O&M)
Date of Decision: 02.05.2024

The Commissioner of Income Tax (Exemptions) Chandigarh
. . . . Appellant
Vs.

Swami Ganga Giri Janta Girls College
. . . . Respondent
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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR
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Present: Mr. Amanpreet (A.P.) Singh, Advocate
for the appellant.

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<u>SANJEEV PRAKASH SHARMA, J.(Oral)</u>

<u>CM-7915-CII-2024</u>

For the reasons stated, application for condonation of delay of 80 days in filing of appeal is allowed and accordingly delay is condoned.

<u>Main case</u>

1. This is an appeal preferred against the order passed by the ITAT whereby the order passed by the CIT (Exemptions), Chandigarh was quashed and set aside.
2. Learned counsel for the Revenue submits that the ITAT has fallen in error and a substantial question of law arises in the present case for adjudication by this Court.
3. However, we find that the ITAT has found that Rule 2BBB was not applicable during the impugned assessment year i.e. A.Y. 2012-13, as the same was brought in force from 12.12.2014.

4. Learned counsel further submits that judgment of *Tolani Education Society vs. Deputy Director of Income Tax (Exemptions), [2013] 351 ITR 184* relied on the judgment passed by the Supreme Court in *Queen's Educational Society vs. Commissioner of Income Tax, [2015] 372 ITR 699 (SC)*, which has been overruled by the Supreme Court in the case of ***M/s New Noble Educational Society vs. The Chief Commissioner of Income Tax and another, 2022 SCC Online SC 1458.***

5. However, we find the argument to be misconceived. The only part of the judgment where the reasoning and conclusions pertain to the interpretation of expression 'solely' is mentioned in *American Hotel and Lodging Association vs. CBDT and others, [2008] 301 ITR 86 (SC)* and *Queen's Educational Society* (supra), has been overruled and the larger Bench in *New Noble Educational Society* (supra) has held as under:

> *"76. The conclusions of this court are summarized as follows:*
>
> *a. It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.*
>
> *b. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C) of the IT Act. At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.*
>
> *c. The seventh proviso to Section 10(23C), as well as Section 11(4A) refer to profits which may be 'incidentally'*

generated or earned by the charitable institution. In the present case, the same is applicable only to those institutions which impart education or are engaged in activities connected to education.

d. The reference to 'business' and 'profits' in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of business which is 'incidental' to educational activity – as explained in the earlier part of the judgment i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc.

e. The reasoning and conclusions in ***American Hotel (supra) and Queen's Education Society (supra)*** *so far as they pertain to the interpretation of expression 'solely' are hereby disapproved. The judgments are accordingly overruled to that extent.*

f. While considering applications for approval under Section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The observations made in American Hotel (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment. Whilst that reasoning undoubtedly applies to newly set up charities, trusts etc. the proviso under Section 10(23C) is not confined to newly set up trusts – it also applies to existing ones. The Commissioner or other authority is not in any manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.

g. It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc.

This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from 01.04.2021.

6. In view of the fact that the Assessing Officer in his order reached to the conclusion that the Trust had claimed exemptions under Sections 10(23C)(iiiab) of the Income Tax Act, 1961 as it is substantially financed by the Government receiving grant of Rs. 89,19,294/- against gross receipts of Rs.2,66,32,390/- which is more that 20%, and the expenditure of Rs.2,56,60,780/- had been incurred by the Trust towards its aims and objects in carrying out activities in the field of education, and the expenditures having been incurred with respect to that alone, the exemptions were rightly granted. Thus, we find that the order passed by the ITAT as well as the assessing officer do not require to be interfered with keeping in view the observations and directions passed by Hon'ble the Supreme Court in ***New Noble Educational Society's case (supra).***
7. Thus, no substantial question of law arises in the present case. Appeal is accordingly ***dismissed***.
8. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

May 02, 2024
Mohit goyal

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? ***Yes/No***