(2004) 08 MP CK 0065

In the Madhya Pradesh High Court

Case No : Civil Revision No. 397 of 2002

Board of Secondary Education APPELLANT

Vs

Municipal Corporation RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 — Section 8
Madhya Pradesh Municipal Corporation Act, 1956 — Section 136, 147, 149

Citation : AIR 2005 MP 149 : (2004) ILR (MP) 1174 : (2004) 4 MPHT 507 : (2005) 1 MPLJ 157

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : R.N. Singh and A.P. Singh, for the Appellant; Ajay Mishra and Shilpi Pathak, for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.

This revision u/s 115 of CPC is directed against the order dated 21-2-2003 passed by VII ADJ, Bhopal in M.A. No. 8/2001.

Applicant Board of Secondary Education, Bhopal has been constituted u/s 3 of the M.P. Madhyamik Shiksha Adhiniyam, 1965 (for short "the Act"). The applicant is required to discharge various functions and duties enumerated u/s 8 of the Act for promoting the Secondary Education in the State. For the first time in 1985 property tax was imposed by non-applicant in respect of premises used by the applicant Board for its own use including Head Office, Administrative Office building. However, on objection being raised, non-applicant Corporation exempted the premises used by applicant Board for its own use. Since then, the applicant was regularly paying the property tax in respect of premises from where rent is generated. The non-applicant Corporation issued a notice for payment of property tax in respect of premises used by applicant/Board including Head Office building. The applicant submitted an objection u/s 147 of the M.P.

Municipal Corporation Act (hereinafter referred to "the Act" for convenience) requesting inter alia that the applicant/Board u/s 136 (c) is entitled to exemption from payment of property tax. However, the Commissioner, Municipal Corporation, Bhopal rejected the objection vide order dated 3-7-2001. Being aggrieved, the applicant preferred an appeal u/s 149 before the 7th ADJ, Bhopal. The Court below vide impugned order dismissed the appeal M.A. No. 8/2001. Being aggrieved, the applicant has preferred this revision u/s 115 of CPC.

It is contended that the applicant Board of Secondary Education is an educational institution established u/s 3 of M.P. Madhyamik Shiksha Adhiniyam, 1965. As such administrative office building premises in actual use of the applicant was exempted from payment of property tax. However, subsequently, the non-applicant Corporation imposing the tax directed the applicant to make payment.

The scheme of imposition of property tax is laid down under Sections 135, 136 of the Act.

136. Exemptions.-- The property tax levied u/s 135 shall not be leviable in respect of the following properties, namely:--

(c) buildings and lands or portions thereof used exclusively for educational purposes including schools, boarding houses, hostels and libraries if such buildings and lands or portions thereof are either owned by the educational institutions concerned or have been placed at the disposal of such educational institutions without payment of any rent.

Buildings or portions thereof used exclusively for educational purposes accordingly are exempted from payment of property tax. It is contended that the applicant Board of Secondary Education is not an educational institution. u/s 8 of the Madhyamik Shiksha Adhiniyam, 1965, the applicant Board is required to discharge the following duties, namely:--

(a) to prescribe courses of instruction in such branches of Secondary Education as it may think fit;

(b) to conduct examinations based on such courses and take all steps ancillary thereto;

(c) to admit to its examinations, on conditions that may be prescribed, candidates who have pursued the prescribed courses of instruction--

(i) in institutions recognized by the Board; or

(ii) privately;

(d) to publish the results of its examinations;

(f) to recognize institutions situated in Madhya Pradesh for the purposes of admitting them to the privileges of the Board;

(i) to organize and provide lectures, demonstrations, educational exhibitions and to take such other measures as are necessary to promote the standard of secondary education;

(l) to admit to its examination candidates who have pursued correspondence course conducted by the Board.

(mm) (i) to organize conference, seminars, symposiums to promote the standard of Secondary Education;

(ii) to organize workshops and training programmes for papers setters;

(iii) to take necessary steps with regard to modernising of school curriculum, strengthening of science and mathematics education, work experience and vocationalisation by making investigation and researches into the latest evaluation processes or other experience;

(iv) to take all necessary steps to make examinants more valid, reliable, comprehensive and elaborate;

(v) to arrange for comprehensive evaluation of students through cumulative records and internal assessment records;

(n) to do all other things ancillary to any of the purposes specified above or for the purpose of carrying into effect the provisions of this Act.

Thus from various functions and duties required to be discharged by the applicant/Board, it is clear that for all purposes it is an educational institution. It is contended that provisions providing for exemption under the tax statutes has to be construed strictly and by taking external aid nothing can be included in Section 136 (c) of the Act. The Apex Court in The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, , dealing with the interpretation of Section 2(15) of the Income Tax Act, 1961, has held, that the sense in which the word "education" has been used in Section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling. Their Lordships while interpreting the word "education" appearing in Section 2(15) of the Income Tax Act, 1961 mainly were dealing with the institution carrying on their educational activities on commercial basis. Ordinarily profit motive is a normal incidence of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the Court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit. No such allegation has been made against the applicant that it is an educational institution carrying on with the commercial activities as source of income. In State Level Committee and another Vs. M/s. Morgardshammar India Ltd., , it has been held :--

While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.

The choice between a strict and liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by the Apex Court in Union of India and others Vs. M/s. Wood Papers Ltd. and another, .

The word educational institution in Section 136(c) of the Act has not been defined. Therefore where the institution seeks exemption from payment of property tax the eligibility could only be ascertained with reference to functions, duties to be discharged by the institution. With reference to the functions - statutory duties required to be discharged by the applicant/Board u/s 8 of M.P. Madhyamik Shiksha Adhiniyam it comes within the definition of educational institution.

Dealing with the exemption to lands and buildings exclusively occupied and used for charitable purpose u/s 115(4)(a) of the Delhi Municipal Act, in Christian Children Fund Inc. Vs. Municipal Corporation of Delhi and Others, , the Apex Court held as under :--

"The premises required by an organization for its administrative office are an essential and an integral part of its charitable activities. Sometimes the administrative office of such organizations may be located where the charitable activity or activities are carried on and sometimes it is located away from such place depending upon the availability of the premises and convenience. So long as the premises in which the administrative office of the charitable organization is carried on are exclusively used and occupied by its office, the premises would be ones covered by the exemption provided under the said provisions. To hold otherwise, viz., that it is only the premises where actual charitable activity is carried on alone is qualified for the exemption, is to irrational."

The administrative block and premises in actual use of applicant/Board was exempted from payment of property tax. Subsequently, non-applicant Municipal Corporation has imposed property tax on the administrative office building premises in actual use of the applicant where from income by rent is not generated. The Commissioner of the non-applicant/Municipal Corporation mechanically dealt with the objection preferred by the applicant u/s 147 of the Act and communicated rejection vide memo dated 3-7-2001.

Administrative office, buildings premises in actual use of applicant Board wherefrom the income by rent is not generated, shall be deemed to be the building owned by educational institution. As such u/s 136(c) of the Act, portions to the extent aforesaid shall not be liable for assessment - recovery of tax.

Consequently, revision is allowed. Setting aside the impugned order dated 21-2-2002 passed by 7th ADJ, Bhopal in M.A. No. 8/2001, it is directed that in respect of administrative buildings, premises in actual use wherefrom income by rent is not generated, non-applicant is not entitled to recover property tax alleged from the applicant/Board.

No order as to costs.

