(1985) 01 CAL CK 0011

In the Calcutta High Court

Case No : Income-tax Reference No. 423 of 1980

Commissioner of Income Tax APPELLANT

Vs

Doon Foundation RESPONDENT

Date of Decision : 07-01-1985

Acts Referred:
Income Tax Act, 1961 — Section 10(22), 12A

Citation : (1986) 53 CTR 440 : (1985) 154 ITR 208

Hon'ble Judges : Dipak Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : A.C. Maitra, for the Appellant;R.N. Bajoria, for the Respondent

Judgement

Ajit K. Sengupta, J.—The question in this reference u/s 256(1) of the I.T. Act, 1961, is whether the assessee is an educational institution and entitled to exemption u/s 10(22) of the I.T. Act, 1961, The assessee is a society registered under the West Bengal Societies Registration Act, 1961. The society has been established as an educational society and had been granted registration u/s 12A of the I.T. Act, 1961. In the assessment for the assessment years 1973-74 and 1974-75, the ITO did not allow the exemption claimed by the assessee u/s 10(22) as he found that the assessee had other charitable objects within education and the benefit of Section 80G had also been granted to the assessee as also the exemption u/s 11 was allowed to it. The assessee appealed to the AAC. Before the AAC, it was contended that the assessee trust was created for educational purposes and it has also been affiliated as an educational institution. The AAC examined the relevant clauses of the trust deed and came to the finding that the assessee was entitled to the exemption u/s 10(22) of the Act. The AAC held as follows :

"It is seen that the assessee is a society which was formed as an educational institution and existing solely for educational purposes. Some funds have been raised and some donations had also been received by the society for this purpose. The assessee had invested the fund available in some investments as indicated in the balance-sheet. It has earned income from dividend and interest during the year under consideration. It appears that these assets are assets of the educational institution. The assessee had just begun its activity and during the year under consideration had started preparation of regular classes for teaching of Hindi and purchased some books and periodicals for library."

2. The Revenue preferred an appeal before the Tribunal. It was contended on behalf of the Revenue that since the assessee was not a recognised educational institution like a university, the ITO was justified in rejecting the assessee''s claim for exemption u/s 10(22). It was pointed out that the assessee had other charitable objects within education for which benefit u/s 80Ghad already been granted. It was, therefore, submitted that the assessee was not entitled to exemption u/s 10(22). It was, however, contended on behalf of the assessee that in view of the various judicial pronouncements on the point at issue, the AAC was justified in allowing the assessee''s claim for exemption u/s 10(22). The Tribunal considered the objects of the assessee trust and held that the AAC was justified in allowing the assessee''s claim for exemption u/s 10(22). The Tribunal was of the opinion that the objects for which the trust was established were purely for educational purposes. The Tribunal also found that Clause 7 of the trust deed provided that if any activity or object of the trust is found to be outside the scope of solely educational purpose, it should be deemed as non est and shall be deemed to be excluded from the objects of the foundation. The Tribunal, therefore, took the view that the mere fact that the assessee trust had other charitable objects within the educational purpose cannot disentitle the assessee from the benefit of Section 10(22).

3. On the aforesaid facts, the following question was referred to this court u/s 256(1) of the I.T. Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that M/s. Doon Foundation was an educational institution and entitled to exemption u/s 10(22) of the Income Tax Act, 1961 ?"

4. Mr. A. C. Maitra, the learned advocate appearing for the Commissioner, has submitted that the educational institution of the assessee is not affiliated to any University. It is not different from a tutorial home or coaching institution which is unaffiliated to any university or board and which is run for profit purpose. This institution is not existing solely for educational purpose. It has also purposes of profit. He has further submitted that, in any event, the educational institution having not started functioning and being in the preparatory stage, the assessee cannot get the benefit of exemption. It is further submitted that the Tribunal has relied on the deed of trust but the relevant clauses have not been set out in the appellate order of the Tribunal and it is, therefore, not clear what the real object of the trust is. It is also contended that the entire income of the trust was not spent wholly for educational purposes and the Tribunal was, therefore, not right in allowing exemption to the assessee u/s 10(22) of the Act.

5. Mr. R. N. Bajoria, learned advocate for the assessee, has submitted that the assessee is an educational institution which exists solely for educational purposes. For obtaining the benefit u/s 10(22), an educational institution is not required to be affiliated to any university nor is it necessary for it to spend the entire income for educational purposes. It is his contention that so long as the institution exists not for the purposes of any profit and such institution is an educational institution, the assessee is entitled to relief u/s 10(22).

6. Learned advocates appearing for the parties have relied on several decisions in support of their respective contentions.

7. The first decision which has been relied on is the case of Additional Commissioner of Income Tax Vs. Aditanar Educational Institution, . In that case, the assessee, a society registered under the Societies Registration Act, 1860, had for its objects to establish, run, manage, or assist colleges, schools and other educational organisations existing solely for educational purposes. The assessee received donation from a trust. The assessee started a college and utilised the entire donation for the college. The assessee claimed that as it was an educational institution existing solely for educational purposes, its taxable income was nil. Though this was accepted by the ITO, the Commissioner held that the assessee was not entitled to any exemption under Sections 11 and 12(2) of the I.T. Act, 1961, and accordingly, set aside the nil assessments and directed the ITO to re-do the assessments taking into consideration the voluntary contributions received from the trust. The Commissioner also held that the assessee will not be eligible for exemption u/s 10(22) as the exemption under that provision would apply only to an educational institution as such and not to anyone else who might be financing the running of the institution. The Tribunal, however, held that the assessee was an educational institution existing for educational purposes and not for purposes of earning any profit and hence the assessee itself could be termed as an educational institution so as to come within the ambit of Section 10(22). In that case, the Madras High Court held that any educational institution would fall within the scope of Section 10(22) even though it may have or may not have anything to do with a university and the college run by the assessee would come within the term "other educational institution" in Section 10(22). The sole purpose for which the assessee had come into existence was education at the level of college and school and hence it cannot be said that the assessee was only a financing body and did not come within the expression "other educational institution" in Section 10(22). An educational society could be regarded as an educational institution if the society was running an educational institution. All the income of a society running a college would not be exempt u/s 10(22). Only the income which has a direct relation or is incidental to the running of the institution as such would qualify for exemption. Thus the conclusion of the Tribunal that the assessee was eligible for exemption u/s 10(22) was upheld by the High Court.

8. The aforesaid judgment of the Madras High Court was followed by the Gujarat

High Court in the case of Commissioner of Income Tax Gujarat-IV Vs. Sindhu Vidya Mandal Trust, . There the court held that the terms "institution" and "educational institution" have not been denned under the Act. In the Oxford English Dictionary'', the word "institution" is defined to mean "an establishment", organisation or association instituted for the promotion of some object, especially one of public or general utility, religious, charitable, educational etc. It cannot be he held that since the word "trust" is not used in Section 10(22) of the I.T. Act, 1961, that provision has no application to a trust. A trust is an association of persons--the trustees. It can also be described as a body of individuals, namely, trustees. It is a body which carries on organised activities enumerated in the trust deed which creates it. In that sense, it can also be described as an organisation. Where a trust which exists solely for educational purposes runs a primary and secondary school, such school is part of the assessee-trust. The court held that the assessee came within the expression "other educational institution" in Section 10(22) and was entitled to exemption under that provision.

9. Mr. Bajoria has heavily relied on the decision of this court in the case of Birla Vidhya Vihar Trust Vs. Commissioner of Income Tax, Central I,) . In that case, the assessee trust claimed exemption u/s 10(22) in respect of the income from Mahadevi Birla Girls'' High School and Mahadevi Birla Sishu Vihar. The ITO rejected the claim for exemption on the ground that the trust was neither a university nor an educational institution. The assessee being a trust cannot avail of the exemption. The ITO also held that the trust did not exist solely for educational purposes as the trust had other charitable/religious purposes also. The AAC was, however of the view that Section 10(22) of the Act applied to the facts and circumstances of that case as the trust was entitled to exemption in respect of the schools income and it was not necessary that only the educational institution by itself was entitled to such exemption. The Tribunal mainly relied on the fact that the recipient of the income was neither a university nor an educational institution. The Tribunal referred to the fact that the trust deed under which the trust functioned permitted investment or application of the trust money or trust income to objects not educational, though charitable. This court held that the recipient or the owner of the income may be an assessee or any person apart from a university or an educational institution but the income not to be included under Sub-section (1) of Section 10 must be from a source, which is a university or an educational institution, and which must fulfil the other requirements of Sub-section (22) of Section 10. Merely because there is surplus, that is to say, a surplus of receipt over expenditure, it cannot be said that the educational institution exists for profit, if that surplus is intended or is maintained for the purpose of education and not for the purpose of personal gain of the recipient or the owner of the income. The fact that there was a solitary instance of application of income from the schools for non-eductional purposes in a prior year was not very material. The fact that the assessee-trust had objects other than educational objects was also not material.

10. The next decision cited is of the Karnataka High Court in the case of

Commissioner of Income Tax, Karnataka-I Vs. Academy of General Education, Manipal, . In that case, the assessee, Academy of General Education, Manipal, a society registered under the Societies Registration Act, 1860, was running nine educational institutions. Its primary object was to establish and conduct schools and colleges. The assessee derived income from securities, properties and from other sources like dividends, refund of scholarship and donations etc. No amount of the income was spent for any purpose unconnected with education. It was held that the assessee was an educational institution existing solely for the purpose of education and not for profit. Therefore, the assessee was an educational institution, the income of which was exempt u/s 10(22) of the Act.

11. The last decision cited is in the case of Commissioner of Income Tax, Karnataka-II, Bangalore Vs. Saraswath Poor Students Fund, . In that case, the assessee was a society registered under the Societies Registration Act, 1860. The primary object of the assessee was to extend financial help to the students and not to establish any educational institution to impart education to students. It was, therefore, held that the assessee was not an educational institution and was not entitled to exemption u/s 10(22).

12. The assessee in our case is a society registered under the West Bengal Societies Registration Act, 1961. The objects for which the assessee, Doon Foundation, is established as contained in Clause 3 of the memorandum of association are, inter alia, as follows :

"(i) Doon Foundation is established as an educational institution existing solely for educational purposes ;

(ii) Without prejudice to the generality of sub-para (i), Doon Foundation, in furtherance of the above .objects, may carry out any or all of the following objects ;

(iia) To promote and manage schools, colleges or other bodies or institutions of all description including public schools, technical institutes and vocational institutes for teaching subjects such as secretarial courses, shorthand, typing, operating business machines, commercial photography, journalism, house keeping, dress making, interior decoration and the like ;

(iib) To establish, manage and run laboratories or workshops to enable students to get practical training while studying ;

(iic) To open libraries, reading rooms and evening classes for the education of students and of artisans, fitters, turners and other skilled and semi-skilled workers ;

(iid) To publish books, magazines, periodicals or other literature ;

(iie) To organise and provide facilities for educational conferences, seminars, study centres, lectures, exhibitions and the like ;

(iii) The Foundation is not established for purposes of profit. No part of the income or corpus of the Foundation shall be applied directly or indirectly for the benefit of the members of the Foundation or their relatives or other persons specified in Section 13 of the Income Tax Act, 1961, as amended from time to time ;

(iv) The income and property of the Trust shall be applied solely towards the promotion of the objects and purposes of the Foundation as set forth in this paragraph.

7. If any activity as set out above in para 3 is found to be outside the scope of solely educational purpose, it shall be deemed as non est and shall be deemed to be excluded from the objects of the Foundation."

13. The memorandum of association clearly shows that the assessee had for its objects, inter alia, to establish, run, manage or assist colleges, schools, technical and vocational institutes. The objects indicate that the society is existing solely for educational purposes. Clause 7 provides that if any activity as enumerated in Clause 3 is found to be outside the scope of the educational purpose, it shall be deemed as non est and shall be deemed to be excluded from the objects of the foundation. The contention of Mr. Maitra that the assessee-society is neither a university nor an educational institution and, therefore, cannot get any exemption u/s 10(22) cannot be accepted. Section 10 provides that in computing the total income of a previous year of any person, any income falling within any of the clauses of Section 10 shall not be included. Sub-section (22) of Section 10 provides that any income of a university or other educational institution existing solely for educational purposes and not for purposes of profit will not be included in the total income. The assessee runs an educational institution. If the educational institution run by the assessee exists solely for educational purposes, in that event, income of such institution cannot be included in the total income of the assessee-society. If the educational institution exists solely for educational purposes and not for purposes of profit, in that event the fact that the recipient or owner of the income is a person other than the educational institution or university, would not affect the position. The word "institution" has not been defined in the Act. A society registered under the Societies Registration Act whose primary objects are to establish, support, manage or conduct schools, colleges, etc., would also come within the purview of an educational institution. If a society primarily engages itself in educational activities or runs a school or college, it is entitled to claim exemption u/s 10(22). It is immaterial whether the society itself is an educational institution or it runs an educational institution. We are also unable to accept the contention of Mr. Maitra that an educational institution to be eligible for exemption u/s 10(22) should be affiliated to any university or any board. Section 10(22) does not impose such a condition. So long as the income is derived from an educational institution existing solely for educational purposes and not for purposes of profit, such income is entitled to exemption u/s 10(22), whether or not such educational institution is affiliated to any university or college or board. If the contention of the Revenue is accepted,

then many of the societies running institutions solely for imparting education would not get the benefit of Section 10(22). Education as envisaged in Section 10(22) may be imparted in a school or college or institution which may or may not be affiliated to, or recognised by, a university or board. In this case, the ITO has not rejected the claim of the assessee on the ground that the assessee has any object of profit or the society exists for the purposes of profit. The assessee-society has no motive for profit or personal gain. It is neither a tutorial home nor a coaching institution which runs solely for the purpose of profit or personal gain. The ground on which the claim was rejected was that the assessee had objects other than educational objects. From the objects as enumerated hereinabove, it would be clear that all the objects of the assessee are educational objects or are connected with education. It has not been shown to us which of the objects are unconnected with education. Even where a society or trust which owns an educational institution has charitable objects other than educational objects, even then, taking all the relevant factors into consideration like the aims and objects, the power enabling the society or the trust to function, its activities, etc., if it is found that the source generating the income exists solely for the purpose of education, such a society or trust is entitled to exemption u/s 10(22) in respect of only the income derived from the educational institution.

14. The further contention of Mr. Maitra is that in this case, the assessee has not yet set up the educational institution and cannot, therefore, get the exemption. According to Mr. Maitra, the assessee has only taken some steps for holding regular classes for teaching Hindi and purchased some books and periodicals for a library and it cannot be said that during the relevant previous year, the assessee was running any educational institution. The condition precedent for claiming exemption u/s 10(22) is, whether the educational institution exists solely for educational purposes and not for purposes of profit. There is no dispute nor can it be disputed that the assessee-society exists solely for educational purposes. The assessee has commenced activities connected with the imparting of education. For the purpose of holding regular classes for teaching of Hindi, the assessee has taken all preliminary steps including purchase of books and periodicals. Such activities are the steps towards running of a full-fledged teaching course. We are, therefore, unable to accept the contention of the Revenue that the assessee did not start running any educational institution during the previous year in question. The educational institution has been established or set on foot during the relevant previous year. In our opinion, the decision in the case of Commissioner of Income Tax, Karnataka-II, Bangalore Vs. Saraswath Poor Students Fund, , has no application to the facts of this case inasmuch as in that case the primary object of the assessee was to extend financial help to students and not to establish any educational institution or to impart education to students. Here, the objects are to establish and run an educational institution and to impart education to students and for that purpose, steps have been taken by the assessee-society.

15. In the premises, we are of the view that the Tribunal was right in holding

that the assessee is entitled to the exemption u/s 10(22). The question, wherefore, is answered in the affirmative, in favour of the assessee and against the Revenue.

16. There will be no order as to costs.

Dipak Kumar Sen, J.

17. I agree.

