
(2003) 02 BOM CK 0113

In the Bombay High Court

Case No : Income-tax Appeals No's. 27, 28, 29 of 2001 and 6, 7 and 10 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Vidya Vikas Vihar

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Income Tax Act, 1961 — Section 10, 10(22)

Citation : (2004) 187 CTR 446 : (2004) 265 ITR 489

Hon'ble Judges : V.M. Kanade, J;V.C. Daga, J

Bench : Division Bench

Advocate : Anand Jaiswal, in I.T.A. Nos. 27, 28 and 29 of 2001 and Anand Parchure, in I.T.A. Nos. 6, 7 and 10 of 2002, for the Appellant; S.N. Bhattad, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—Heard finally by consent of parties. In this batch of six appeals filed at the instance of the Revenue, the following common reframed substantial question of law with respect to the scope of Section 10(22) of the Income Tax Act, 1961 (for short, the "Act"), arises for consideration :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that income of M/s. Vidya Vikas Vihar, Nagpur, is exempt u/s 10(22) of the Income Tax Act, 1961, for the relevant years involved in the appeals ?"

2. The facts :

The Vidya Vikas Vihar, Nagpur, is a registered society registered under the Maharashtra Co-operative Societies Act and it is engaged in imparting technical education to the students. The said institute is being run on no grant-in-aid basis. The said institute is imparting training in the discipline of engineering technology. The dominant object of the respondent educational institution is to open and run college of polytechnic to impart technical education. One of the

objects shown in the constitution of the society is to construct houses for weaker sections of the society, if anything remains surplus after incurring expenses on the activities of imparting education.

3. The constitution of the society further spells out, in the case of winding-up, the assets of the society, the surplus funds and/or property are to be donated to another educational institution. In order to fulfil the object of the educational activities, certain buildings were required to be constructed. To construct such buildings, the respondent-society has collected donations from the students; the accounts of which have also been maintained and the same have been reflected in the books of account of the society.

4. The statutory provision :

With the aforesaid factual position available on record, it is necessary to have a look to the text of the statutory provision with which we are concerned. Section 10(22) of the Income Tax Act, 1961, stands omitted by the Finance (No. 2) Act of 1998, with effect from April 1, 1999. The said section before omission read as under :

"any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit;"

was exempted.

5. On the aforesaid facts and in the backdrop of the aforesaid statutory provision, the Tribunal was pleased to hold that the dominant object of the society is only to impart technical education to the students. The supplementary object to provide houses to weaker sections has never taken place and the institution never tried to pursue it. Based on this finding, the Tribunal held that the respondent/assessee is an educational institution existing solely for educational purposes and not for the purposes of profit as such, the said institution was exempted under the provisions of Section 10(22) of the Act in the relevant assessment years involved in the appeal. Consequently, all the appeals were allowed by the Tribunal by setting aside the order of the Commissioner of Income Tax (Appeals) whereunder the orders of the Assessing Officer in refusing to grant exemption were confirmed.

6. Consideration :

We have heard the parties at length. The question of exemption from Income Tax of profits to the educational institution has been a perennial teaser for the assessee as well as the judiciary. There are various situations in which the question arises. Under Clause (22) of Section 10 one of the situations in which question needs consideration is whether or not the income of universities and other educational institutions existing solely for educational purposes and not for the purposes of profit, is exempted. The intention of Legislature was to bring educational institutions under the Act and to grant exemption u/s 10(22) of the Act to such institutions which exist solely for educational purposes and not for

profit.

7. The above provision has been the subject-matter of judicial scrutiny at the hands of this court as well as that of the apex court. The Division Bench of this court in the case of Commissioner of Income Tax Vs. Oxford University Press, while considering a more or less similar question, was pleased to hold that Section 10(22) of the Act provides that in computing the income of the previous year of any person, any income of a university or educational institution is exempted provided it exists solely for educational purposes and not for purposes of profit. It was thus held that the above provision clearly spells out that for the purpose of exemption under this provision, it is not necessary that the assessee should be a university or educational institution. The character of the assessee is not material. He may be "any person" including a person engaged in business or profession and even then he would be entitled to exemption u/s 10(22) of the Act in respect of any income falling within the scope of Clause (22) of Section 10 of the Act. In other words, this court was pleased to hold that what is exempt is "the income of a university or an educational institution existing solely for educational purposes and not for the purpose of profit". Thus, according to this the condition precedent for exemption u/s 10(22) of the Act is the existence of the institution solely for educational purposes and not for the purposes of profit. This judgment has also been affirmed by the apex court in the case of M/s. Oxford University Press etc. Vs. Commissioner of Income Tax, .

8. Similarly, the apex court had also an occasion to consider the scope of Section 10(22) of the Act in Aditanar Educational Institution Vs. Additional Commissioner of Income Tax, wherein the apex court was pleased to hold that the language of Section 10(22) of the Act is plain and clear and the availability of the exemption should be evaluated every year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit. It is further held 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 an institution existing solely for educational purposes, since the object is not one to make profit. The decisive or acid test laid down is whether, on an overall view of the matter, the object is to make profit. The apex court also held that one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity. The apex court recorded this finding while dismissing the assessee's appeals against the observations of the High Court to the effect that, the applicability of Section 10(22) should be evaluated or investigated every year and only if it was found that the "institution" existed for educational purposes in the relevant year in that event even if any profit is resulted ; may be incidental to the purpose of education ; even then such income would be exempted.

9. In the instant case, it is not in dispute that the assessee-institution solely existed for educational purposes. The incidental object of constructing houses for weaker sections was never implemented or acted upon by the assessee in the

relevant assessment year. Under these circumstances no fault can be found with the findings recorded by the Tribunal. The view taken by the Tribunal is absolutely in accordance with law and in consonance with the view taken by the apex court in Aditanar Educational Institution Vs. Additional Commissioner of Income Tax, . It would be necessary for the assessee to file return every year and to demonstrate that the educational institution existed during the relevant year solely for educational purposes and not for purposes of profit.

10. In the above view of the settled legal position, no fault can be found with the impugned order of the Tribunal impugned in this appeal.

11. In the result, the appeals are dismissed with no order as to costs.