

(2012) 03 DEL CK 0067

In the Delhi High Court

Case No : Writ Petition (C) 4716 of 2010

Council for The Indian School Certificate Examinations

APPELLANT

Vs

Director General of Income Tax

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 10(22), 10(23C)

Citation : (2012) 188 DLT 553 : (2012) 206 TAXMAN 466

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : M.P. Rastogi with Mr. K.N. Ahuja, for the Appellant; Abhishek Maratha, Senior Standing Counsel with Ms. Anshul Sharma, for the Respondent

Judgement

Sanjiv Khanna, J.—Council for the Indian School Certificate Examinations, a Society registered under the Societies Registration Act, 1860 has filed the present writ petition under Article 226 & 227 of the Constitution of India impugning order dated 08.10.2008 passed by the Director General of Income Tax (Exemptions), Delhi ("DG", for short) denying them exemption u/s 10(23C)(vi) of the Income Tax Act, 1961 ("Act", for short). The operative portion of the impugned order which also records the reasoning reads as under: -

Perusal of the documents submitted by the applicant reveal that it conducts examinations for ICSE and ISC; awards certificates to those who have passed the examination and conduct other incidental activities. The applicant's income comes from various sources and mainly from sources such as Registration and Affiliation fees, Examination Fees, Re-check & Miscellaneous fees. The above facts indicate that the applicant Council is not an educational institution but an examination body. This has been further strengthened by another document produced by the applicant viz. Extract of Delhi School Education Act wherein its examinations are recognized as public examination for the purpose of the Act.

On the facts and in the circumstance stated herein above, I am not satisfied that

the applicant is an educational institution existing solely for educational purposes. Therefore the application u/s 10(23C) (vi) for the A.Y.2008-09 to 2010-11 is rejected.

2. It is not disputed before us that the petitioner institute does not conduct classes or is directly engaged in teaching the students. The petitioner affiliates schools, prescribes syllabus and conducts examination of students. The petitioner is authorised and permitted to conduct the said exams and the results enable the students to get admission at the graduate level. It is not disputed before us that the exams conducted by the petitioner society are recognised. In the writ petition it is stated that about 1750 schools all over India are affiliated with the petitioner society and are imparting education from nursery to twelfth standard. In other words the petitioner is performing the similar functions if not identical functions performed/ undertaken by the Central Board of Secondary Education and the State Boards.

3. The question raised is whether or not the petitioner can be regarded as an educational institution for the purpose of Section 10(23C)(vi) of the Act. The said provision reads as under: -

(23C) any income received by any person on behalf of-

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) of sub-clause (iiiad) and which may be approved by the prescribed authority;

4. Reading of the said provision shows that any University or other educational institution existing solely for educational purposes qualify under the clause. The University and the educational institution should not be for the purposes of profit. The second requirement is negative in nature, whereas the first requirement is positive. We cannot accept the contention of the Revenue and the reasoning given in the impugned order that the petitioner is not an educational institution because it is an examination body and its principal work is to conduct examination and charge examination fee, etc. The words "educational institution" used in Section 10(23C)(vi) and the phrase "educational purpose" have been interpreted and examined in several cases. We have a direct decision of Orissa High Court in the case of SECONDARY BOARD OF EDUCATION, ORISSA Vs. INCOME TAX OFFICER, WARD "E", CUTTACK., . The Secondary Board of Education was conducting examinations and a question arose whether it was an educational institute or not. It was held that the Secondary Board of Education exists solely for educational purpose and, therefore, an educational institution. The aforesaid Board had been created to control secondary education, prescribe courses of study and award certificates to the successful candidates. It was to conduct examinations, etc. The aforesaid activities undertaken by the Board, it was observed, qualify and were for the purpose of education. Thus, the Board was an educational institution. The High Court rejected the contention that fee,

etc. for the said services, constitute and should be regarded as activities for purpose of profit. We may note that there is no allegation in the impugned order dated 08.10.2008 that the petitioner is engaged in activities for purposes of profit.

5. An institution established for educational purpose need not conduct teaching classes, is no longer a matter of doubt or ambiguity and was examined by the Supreme Court in *Assam State Text Book Production and Publication Corporation Limited Vs. Commissioner of Income Tax, Gauhati-I*, . The said corporation was engaged in publication of text books for the students and had claimed exemption u/s 10(22) of the Act. The Revenue disputed and claimed that the corporation was not an educational institution. The Supreme Court reversed the finding of the High Court and held that the said corporation was engaged in educational purposes and, therefore, an educational institution entitled exemption u/s 10(22) of the Act. The said corporation was not engaged or conducting teaching classes or directly imparting education through teachers. In the said case the Supreme Court noticed the judgment of Orissa High Court in the case of *Orissa Secondary Board Education* and approved the ratio and principle enunciated therein. Reference was made to the judgment of the Rajasthan High Court in *Commissioner of Income Tax Vs. Rajasthan State Text Book Board*, . This judgment was approved. Rajasthan State Text Book Board (supra) was not engaged in teaching students or holding classes but publication of text books.

6. In *American Hotel and Lodging Association Educational Institute Vs. Central Board of Direct Taxes and Others*, , a number of issues had come up for consideration but one of the aspects examined was whether the appellant institute who was providing services in the form of curriculum, re-production of text books, course material, software, faculty development programme, evaluation system, entrance test and comprehensive certification and registration programme was established and engaged in educational purpose and, therefore, was an educational institution. The Supreme Court distinguished the earlier decision in the case of *M/s. Oxford University Press etc. Vs. Commissioner of Income Tax*, and held that the American Hotel and Lodging Association was entitled to exemption as an educational institute u/s 10(23C)(vi) of the Act. We may only record here that the aforesaid institute was not directly imparting education and had not employed teachers who were teaching or giving lectures to the students. Decision in *Oxford University Press (supra)* is distinguishable as the said assessee was in publication business and engaged in sale of books as a business venture. The assessee had therefore claimed exemption on the ground that it was a university and not on the ground that it is an educational institution. For reasons set out in the majority decision, the claim of the assessee was rejected.

7. Recently, the Madhya Pradesh High Court in *Commissioner of Income Tax Vs. M.P. Rajya Pathya Pustak Nigam*, examined a similar question and after referring to several decisions has held that the term educational purpose was not

restricted merely to holding of teaching class or lectures but educational purpose was equally served when educational text books were published. It is, therefore, clear that courts have laid emphasis on the activity undertaken, while construing or deciding whether or not a particular institution can be regarded as an educational institution. The courts have repeatedly held that the holding of classes is not mandatory for an institution to qualify and to be treated as an educational institution. If the activity undertaken and engaged is educational, it is sufficient.

8. When we apply the aforesaid principle to the admitted nature of activity undertaken by the petitioner, we have no hesitation in quashing the impugned order dated 08.10.2008 and holding that the petitioner is an educational institution. Writ of certiorari is accordingly issued. The petitioner/ authorised representative will appear before the competent authority on 10.04.2012, when a hearing will be provided and thereafter an order in accordance with law will be passed within 60 days of the said hearing. We may clarify that we have not examined other issues and with reference to the order dated 23.03.2010 rejecting the application filed by the petitioner u/s 10(23C)(iv) of the Act for exemption. These issues and questions are left open. The writ petition is disposed of. No costs.