
(2015) 08 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition No. 2680 of 2014 (M/S)

Guru Nanak Education Trust

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

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

Citation : (2015) 08 UK CK 0007

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Arvind Vashistha, Senior Advocate assisted by Vivek Pathak, Advocate, for the Appellant

Judgement

Alok Singh, J.—Present petition is preferred assailing the order dated 23.09.2014 passed by the Chief Commissioner of Income Tax, Dehradun, whereby application seeking approval under Section 10(23-C)(VI) of the Income Tax Act, was rejected.

2. Undisputedly, petitioner is a registered trust/society and is also registered under Section 12-AA and was granted exemption certificate under Section 80-G of the Income Tax Act. Petitioner has applied on the prescribed form No. 56-D on 30.09.2013 for grant of approval under section 10(23-C)(VI) . Application, so moved by the petitioner, was rejected vide order dated 23.09.2014 on the ground that petitioner has other objects apart from imparting education and petitioner has disproportionate fee structure as to maximum fee simply to invest for expansion of the institution which may not fall into the ambit of charitable activity; petitioner has spent huge amount of Rs. 39,00,000/- odd on advertisement; case seems to be covered by the judgment of this Court passed in the case of M/S Queen's Educational Society v. Commissioner of Income Tax. Feeling aggrieved, petitioner has approached this court by way of present writ petition.

3. I have heard Mr. Arvind Vashistha, learned Senior Counsel assisted by Mr.

Vivek Pathak, learned counsel appearing for the petitioner and Mr. V.R. Garg, learned counsel for the respondent No. 2 and 3 and have carefully perused the record.

4. Judgment of this Court in the case of M/s. Queen's Educational Society, relied upon by the Chief Commissioner of Income Tax in the impugned order was subject matter of Civil Appeal No. 5167 of 2008 before the Hon'ble Apex Court and the same was set aside by the Hon'ble Apex Court vide judgment dated 16.03.2015.

5. Hon'ble Apex Court in the case of M/S Queen's Educational Society (Supra) has held as under:

"We reiterate that the correct tests which have been culled out in the three Supreme Court judgments namely Surat Art Silk Cloth, Aditanar and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23-C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. "

6. Hon'ble Apex Court in the case of Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , has held as under:

"that test of predominant object of the activity is to be seen whether it exists solely for education and not to earn profit. However, the purpose would not lose its character merely because some profit arises from the activity. That, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realisation but would reflect unsound principles of management. In order to ascertain whether the institute is carried on with the object of making profit or not it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established."

7. Hon'ble Apex Court in the case of Aditanar Educational Institution Vs. Additional Commissioner of Income Tax, , has held as under:

"The High Court has made an observation that any income which has a direct relation or incidental to the running of the institution as such would qualify for exemption. We may state that the language of Section 10(22) of the Act is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for

educational purposes and not for the purposes of profit. 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 one existing solely for educational purposes since the object is not one to make profit. The decisive or acid test is whether on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity."

8. The Hon"ble Apex Court in the case of American Hotel and Lodging Association Educational Institute Vs. Central Board of Direct Taxes and Others, , has held as under:

38. In deciding the character of the recipient, it is not necessary to look at the profits of each year, but to consider the nature of the activities undertaken in India. If the Indian activity has no co-relation to education, exemption has to be denied, [judgment of this Court in Oxford University Press (supra)]. Therefore, the character of the recipient of income must have character of educational institution in India to be ascertained from the nature of the activities. If after meeting expenditure, surplus remains incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. In other words, existence of surplus from the activity will not mean absence of educational purpose [judgment of this Court in Aditanar Educational Institution Vs. Additional Commissioner of Income Tax, . The test is the nature of activity. If the activity like running a printing press takes place it is not educational. But whether the income/profit has been applied for non-educational purpose has to be decided only at the end of the financial year.

44. Having analysed the provisos to section 10(23C)(vi) one finds that there is a difference between stipulation of conditions and compliance thereof. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardized form in terms of the first proviso. It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance of requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval.

51. For the sake of clarity, we may reiterate that items such as application of income or accumulation of income or investment in specified assets indicated in clauses (a) and (b) in the third proviso are a part of compliance/monitoring conditions. As stated, however, there is a difference between application/utilization of income and outward remittance of income out of India. As discussed above, with the insertion of the provisos in section 10(23C)(vi) of the 1961 Act,

it is open to the prescribed authority (PA) to stipulate, while granting approval, that the approval is being given subject to utilization/application of certain percentage of income, in the accounting sense, towards impartation of education in India. Such exercise would be based on estimation. There is a difference between "accounting income" and "taxable income". At the stage of section 10 , we are concerned with the accounting income. Therefore, it is open to the PA, if it deems fit, to stipulate that certain percentage of accounting income would be utilized for impartation of education in India. Therefore, in our view, it is always open to the PA to impose such terms and conditions as it deems fit. The interpretation we have given is based on harmonious construction of the provisos inserted in section 10(23C)(vi) by the Finance Act, 1998. Lastly, we may reiterate that there is a difference between stipulation by the PA of such terms and conditions, as it deems fit under the provisos, and the compliance of those conditions by the appellant. The compliance of the terms and conditions stipulated by the PA would be a matter of decision at the time of assessment as availability of exemption has to be evaluated every year in order to find out whether the institution existed during the relevant year solely for educational purposes and not for profit."

9. In view of the dictum of Hon''ble Apex Court, it is, thus, clear that prescribed authority has to ascertain whether the educational institution has been applying its profit wholly and exclusively to the objects for which the institution is established. Merely because institution has earned profit would not be deciding factor to conclude that educational institute exists for profit. To decide the entitlement of institution for exemption under Section 10(23-C)(VI) of the Income Tax Act the test of predominant object of the activity has to be applied by posing the question whether it exists mainly for education and not to earn profit.

10. The perusal of objects of the society/trust would make it clear that predominant object of the trust/society is to impart education besides other charitable purposes. Inclusion of other consequential charitable purposes as mentioned in the trust deed would not lead to the conclusion that institution was established to earn profit.

11. In view of the above, order impugned does not sustain in the eyes of law and is hereby quashed. Consequently, present petition succeeds and is hereby allowed. The Chief Commissioner of Income Tax, Dehradun is directed to decide the application moved by the petitioner afresh in the light of observations made hereinbefore preferably within 90 days from today.