
(2015) 03 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 7235 of 2012

Katiani Educational Society	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 10 (23C), 10(23C)(vi)/(via), 11, 139

Citation : (2015) 03 SHI CK 0039

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Ajay Vaidya, for the Appellant; Ashok Sharma, Assistant Solicitor General of India, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—By medium of present writ petition a direction has been sought for quashing the order passed by the Chief Commissioner of Income Tax, whereby the petitioner has been denied the benefit of exemption, as provided under section 10(23C)(vi)/(via) of Income Tax Act (for short, the Act), for the assessment year 2011-2012.

2. The petitioner is an educational society registered under the Societies Act, 1860 at District Kullu and applied for exemption under section 10(23C)(vi)/(via) of the Act before the competent authority vide form No. 56 (D) on 10.6.2011. It is claimed that when the application was being processed, a number of queries were raised by the department, which were duly replied to by the petitioner and accordingly its case was recommended to respondent No. 3 i.e. Chief Commissioner of Income Tax for further necessary action. However, the respondent No. 3 vide order dated 28.6.2012, (for short the impugned order), denied exemption to the petitioner on the ground that the society does not exist solely for the educational purpose and it is existing for the purpose of profit.

3. This order has been challenged on the ground that respondent No. 3 has not

appreciated the provisions of section 10(23C)(vi)/(via) of the Act in its correct perspective and thereby reached to a wrong conclusion. It is also claimed that no reasonable opportunity of being heard had been afforded to the petitioner which is against the principles of natural justice and lastly it is claimed that impugned order is not only harsh and oppressive but against the aims and objectives of sections 10(23C)(vi)/(via) and 139 of the Act.

4. The main contest is between the petitioner and the income tax authorities, who have been arrayed as respondents No. 2 to 4 and have in their reply stated that while adjudicating upon the application for exemption they have acted within the four corners of the law and the order of rejection being a self speaking and detailed one calls for no interference.

We have heard the learned counsel for the parties and have also gone through the records of the case.

5. Before proceeding further, it would be necessary to refer to the provisions of Section 10 (23C) of the Act. The relevant extract of the said provision is quoted below:--

"any income received by any person.....

(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) or sub-clause (iiad) and which may be approved by the prescribed authority.

Provided that the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)] shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption or continuance thereof, under sub-clause (iv) or sub-clause (v): [or sub-clause (vi) or sub-clause (via)]:

[Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf:] Provided also that the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)]-

[(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established; and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and]

(b) does not invest or deposit its funds, other than-

(i) any assets held by the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] where such assets form part of the corpus of the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] as on the 1st day of June, 1973;

[(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;]

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i), [and sub-clause (ia)], by way of bonus shares allotted to the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution];

(iv) voluntary contributions received and maintained in the form of jewellers, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11:]

Provided also that the exemption under sub-clause (iv) or sub-clause (v) shall not be denied in relation to any funds invested or deposited before the 1st day of April, 1989, otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, [1993]:

Provided also that the exemption under sub-clause (vi) or sub-clause (via) shall not be denied in relation to any funds invested or deposited before the 1st day of June, 1998, otherwise than in any one or more of the forms or modes specified in Sub-section (5) of section 11 if such funds do not continue to remain so invested or deposited after the 30th day of March, 2001;] [Provided also that the exemption under sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-

clause (via) shall not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred to in clause (b) of the third proviso to this sub- clause, subject to the condition that such voluntary contribution is not held by the trust or institution, [or any university or other educational institution or any hospital or other medical institution], otherwise than in any one or more of the forms or modes specified in sub- section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1992, whichever is later:]

Provided also that nothing contained in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)] shall apply in relation to any income of the fund or trust or institution, [or any university or other educational institution or any hospital or other medical institution], being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of accounts are maintained by it in respect of such business:"

6. Learned counsel for petitioner has argued that once the predominant object of the activity conducted by the petitioner was only educational then merely because while imparting education profit was generated, it would not dilute the object for which the petitioner has been established. In support of his submission, he has relied upon the judgment reported in Pinegrove International Charitable Trust Vs. Union of India (UOI) and Others, , Commissioner of Income Tax Vs. M/s. Godwin Steels Pvt. Ltd., and a judgment of this court in Maa Saraswati Educational Trust Vs. Union of India and Another, .

7. This submission of the petitioner though appears to be attractive but when tested in the factual background of the case, the same merits rejection. The respondent No. 3 while adjudicating upon the claim of the petitioner has recorded more than a dozen reasons for coming to a categorical conclusion that petitioner was not entitled to the aforesaid provision because it had invested unaccounted income of the members or their relatives in creating a profit generating equipment in the form of commercial educational institution and once such institution had been created there was a systematic siphoning out of income by inflating the expenses in the form of construction/repairs expenses etc.

8. Surprisingly the petitioner has not called in question and challenged even any one of these findings of fact and therefore, in absence of any challenge, this court cannot interfere with these findings of fact in exercise of its power of judicial review under Article 226 of Constitution of India. It is well settled that a party cannot be allowed to prove that what it has not actually pleaded and unlike ordinary suits where the evidence, oral and documentary, is adduced by the parties in support of their respective cases, writ petitions are decided merely and mainly on the basis of evidence which makes it fortiori necessary that pleadings in writ petitions must be far more explicit and exhaustive than they are required to be in ordinary suits.

9. Resultantly, once it is established that the predominant object of the activity conducted by the petitioner was not educational but was generating profit, none of the aforesaid judgments are applicable to the fact situation obtaining in the present case.

10. The petitioner would lastly argue with all vehemence that the impugned order was not sustainable as no reasonable opportunity of being heard had been afforded to the petitioner. This plea is equally merit -less as the impugned order reveals that respondent No. 3 had issued notice to the petitioner and fixed the case for hearing on 21.6.2012 and thereafter again on 26.6.2012 when the Chairman of the society alongwith Inder Ram Chaunaliya, Chartered Accountant had not only attended the proceedings but had filed the reply and other details. In the teeth of such findings, which have gone un-rebutted, it is not lie in the mouth of the petitioner that no reasonable opportunity of being heard had been given to the petitioner.

11. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs.