
(2009) 02 OHC CK 0044
In the Orissa High Court

Rabindranath Educational Trust Rayagada	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Income Tax Act, 1961 — Section 10, 11, 143, 2

Citation : (2009) 107 CLT 402 : (2009) 1 OLR 827 Supp : (2010) 191 TAXMAN 379

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—In the present Writ Petition, the Petitioner challenges the order of the Chief Commissioner of Income Tax, Orissa, Ayakar Bhawan, "Bhubaneswar (hereinafter referred to as "the CCIT")-O.P. No. 3 wherein the CCIT refused to grant exemption claimed u/s 10(23C)(vi) of the Income Tax Act, 1961 (hereinafter referred to as "the IT Act") for the assessment years 2003-04 and 2004-05 on the ground that the said order has been passed illegally and arbitrarily.

2. Bereft of unnecessary details, the facts and circumstances giving rise to the present Writ Petition are that the Petitioner is an Educational Trust registered with District Sub-Registrar, Rayagada on 17.08.1998. Its main object is to spread education and to establish high schools, colleges, technical institutes, medical and dental colleges etc. The Petitioner-Trust is running a college, viz., Institute of Advanced Computer and Research, Rayagada, AT: Prajukti Vihar, P.O./Dist: Rayagada, which is imparting technical education. The Petitioner has got approval from different authorities for running its technical institutions.

For the assessment years 2003-04 and 2004-05, the Petitioner filed its returns of income before the Assistant Commissioner of Income Tax, Berhampur Circle, Berhampur (O.P. No. 5) declaring the net income as "nil". The said returns were processed u/s 143(1) of the IT Act. The Petitioner has made applications to the

CCIT for grant of exemption u/s 10(23C)(vi) for the assessment year 2003-04 on 19.06.2006 and for the assessment year 2004-05 on 16.09.2005. The Learned CCITO.P. No. 3 in course of hearing of the applications for grant of exemption made query regarding payments made to Shriram Chits (Pvt.) Ltd amounting to Rs. 2,03,000 in assessment year 2003-04 and Rs. 5,97,760 in the assessment year 2004-05. In response to said query, the Petitioner submitted his explanation before the Learned CCIT. The Learned CCIT on 17.07.2006 has passed an order disallowing exemption u/s 10(23C)(vi) of the IT Act for the assessment years 2003-04 and 2004-05. Hence, this petition.

3. Mr. J.M.Pattnaik, Learned Counsel for the Petitioner submits that the very purpose of the institution for imparting education clearly comes within the ambit of Section 2(15) of the IT Act as public utility being charitable in nature. The primary and dominant purpose of the Institution being charitable one the other object itself may not charitable but it is merely necessary or incidental to the primary or dominant purpose, which would not prevent the Trust or institution being a valid Trust. Reliance has been placed on the Judgment of the Hon''ble Apex Court in Commissioner of Income Tax, Madras Vs. Andhra Chamber of Commerce, . Learned Counsel further argues that under the provisions of law, two types of exemptions are available, i.e., exemption in respect of - (a) income applied wholly and exclusively for educational purpose; (b) income not applied, but accumulate up to 25% of the total income for the assessment year 2003-04 and 15% for the assessment year 2004-05. Besides the above two exemptions, there is an additional exemption in respect of income not applied for educational purpose and accumulated exceeding 25% or 15% of the total income, as the case may be, which is subject to conditions of investment of funds in specified securities in terms of Section 11(5). Thus, it is argued that the condition for investment of funds in specified securities is applicable only when the accumulated income is more than 25% or 15% of the total income, as the case may be. The Learned Counsel for the Petitioner relied on the decision of the Hon''ble Supreme Court in S. RM. M. CT. M. Tiruppani Trust v. Commissioner of Income Tax (1997) 230 ITR 636. He further argues that in the present case, the accumulated income being below 25% and 15% of the total income of the assessment year 2003-04 and 2004-05 respectively Clause (b) of 3rd proviso to Section 10(23C)(vi) is not at all attracted and, therefore, there is no violation of provision of Section 11(5). According to Mr. Pattnaik, virtually the Petitioner is entitled to get exemption in respect of whole income under Clause (a) of 3rd proviso to Section 10(23C)(vi). Alternatively, it is argued that the investment made in Shriram Chits Pvt. Ltd. during assessment years 2003-04 and 2004-05 in worst case can be taxed but in no circumstance, the entire receipt of the institution for these two assessment years can be taxed. It is further submitted that as per the All India Council for Technical Education Rules, the minimum infrastructure has to be provided for approved admission intake irrespective of the fact as to whether there is less or no admissions at all. With a view to bridge the gap in funds requirement, the trust has contributed to Shriram Chits Pvt. Ltd.

so that the Trust can bid money to meet the funds requirement in emergency.

4. Mr. Akhila Kumar Mohapatra, Learned Counsel for the Revenue vehemently argues that the Petitioner having violated the condition stipulated in 3rd proviso to Section 10(23C)(vi) by not investing the surplus funds in accordance with provisions of Section 11(5) of the IT Act is not entitled to avail exemption u/s 10(23C)(vi) for the assessment years 2003-04 and 2004-05. The Learned CCIT is fully justified in rejecting the Petitioner's claim for exemption u/s 10(23C)(vi) for these two years. Therefore, the petition is liable to be dismissed.

5. At this juncture, it is necessary to take note of the relevant provisions of Section-10 of the IT Act, which are quoted below:

Section 10. Incomes not included in total income - In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

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

xx xx xx (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 (iiid) and which may be approved by the prescribed authority; or

xx xx xx 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 subclause (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 Central Government, before notifying the fund or trust or institution, or the prescribed authority, before approving 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 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, and the Central Government or the prescribed authority, as the case may be, 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 1 st 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 1 st 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 1 st 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 jewellery, 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 anyone or more of the forms or modes specified in Sub-section (5) of Section 11:

6. A plain reading of the said provisions makes it clear that the income received by any person on behalf of any University, educational institutions existing solely for the purpose of education and not for the profit is exempted from payment of tax, if the conditions specified in Section 10(23C)(vi) for the above purposes are satisfied. One such condition provided in 3rd proviso to Section 10(23C)(vi) is that the funds, Trust, Organization applies its income or accumulates it for application wholly and exclusively to the object for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after 1 st 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 it does not invest or deposit its funds for any period during the previous year otherwise than in anyone or more of the forms or modes specified in Sub-section 5 of Section 11 of the IT Act.

7. Third proviso to Section 10(23C)(vi) has two limbs-(a) & (b). It requires

satisfaction of both the limbs. There is nothing to indicate that the requirement of clause (b) is limited to accumulated income in excess of 15% of the total income, as contended by the Petitioner. Requirement of Clause (b) of the 3rd proviso is that there should not be any investment or deposit of its funds (other than asset form part of the corpus) for any period during the previous year otherwise than any mode prescribed in Section 11(5) of the IT Act. Thus, investment or deposit of its fund (other than that held by trust by way of corpus) in contravention of Section 11(5) for any period during the relevant previous year amounts to violation of 3rd proviso to Section 10(23C)(vi) and disentitles an applicant for grant of exemption or continuance thereof u/s 10(23C)(vi) of the IT Act.

8. The moot question here is whether the Petitioner is entitled for grant of exemption u/s 10(23C)(vi) of the IT Act. In the present case, the Petitioner-Trust came into existence under a Deed of Trust dated 17.08.1998. The main object of the Trust is to render education in the field of science, engineering, MCA under the name and style of Institute of Advanced Computer and Research at Rayagada. The Petitioner filed its return for the assessment years 2003-04 and 2004-05 declaring total income as "nil". The Petitioner made applications for grant of exemption u/s 10(23C)(vi) for the said two assessment years.

On scrutiny of the accounts, it was found that the Petitioner made payments amounting to Rs. 2.03,000 in the assessment year 2003-04 and Rs. 5,97,760 in the assessment year 2004-05 to Shriram Chits Pvt. Ltd. Admittedly, the Petitioner made investment in Shriram Chit Funds Pvt. Ltd. during the financial years 2003-04 and 2004-05, which is certainly not in accordance with the provision of Section 11(5) of the IT Act and thus, it violates the conditions stipulated for availing exemption u/s 10(23C)(vi) of the Act. Petitioner's case is also not that the investment or deposit of the funds of the trust was by way of any asset, which forms part of the corpus of the trust.

9. The Hon'ble Supreme Court in Union of India and others Vs. M/s. Wood Papers Ltd. and another, ; held as follows:

Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like any exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment state revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly, speaking liberal and strict constructions of an exemption provisions are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption. clause then it being in nature of exception is

to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then, full play should be given to it and it calls for a wider and liberal construction.

10. This Court in Commissioner of Income Tax Vs. Orissa State Warehousing Corporation, referring to the decisions of Hon''ble Apex Court in Kehar Singh and Others Vs. State (Delhi Administration), and Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, held as follows:

While interpreting a taxing statute, equitable considerations are entirely out of place. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything, which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency. One has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing has to be read in, nothing is to be implied. One can only look fairly at the language used. In a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. The underlying principle is that the meaning and intention of the statute must be collected from the plain and unambiguous expression used therein rather than from any notions, which may be entertained by the Court as to what is just or expedient. The expressed intention must guide the Court....

11. Thus, while interpreting the exemption clause of a taxing statute, utmost care should be taken to give appropriate meaning to words of the statute and the same should be construed strictly. Its construction cannot be extended beyond the language used in the statute.

12. In view of the above, the Petitioner is not entitled for grant of exemption u/s 10(23C) of the IT Act and we do not find any infirmity in the orders passed by the Learned CCIT to be interfered with by this Court.

13. The decision of the Hon''ble Supreme Court in Section RM. M. CT. M. Tiruppani Trust's case (supra) has no application to the case of the present Petitioner, as the aforesaid decision was rendered in the context of granting exemption u/s 11(1) read with Section 11(2) of the IT Act for the assessment year 1970-71 where the basic provisions are different from that contained in Section 10(23C)(vi) of the I.T. Act. In that case, issue of interpretation of the provisions contained in 3rd proviso to Section 10(23C)(vi) was not before the Apex Court for its consideration. The decision of the Hon''ble Apex Court in Andhra Chamber of Commerce's case (supra) is also not relevant for the issue involved in the case at hand as in that case the Hon''ble Apex Court held that "Object of general public utility" is not restricted to object beneficial to the whole mankind. An object beneficial to a section of the public is an object of general public utility. Thus, the decision of the Hon''ble Apex Court in the said case is of

no help to the Petitioner.

14. In the result, the Writ Petition is dismissed. No order as to costs.

B.S. Chauhan, C.J.

I agree.