(2009) 02 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Scientific Educational Advancement Society — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 10

Citation : (2010) 323 ITR 84 : (2009) 179 TAXMAN 155

Hon'ble Judges : M.M. Kumar, J;H.H. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution is directed against order dated 7-10-2008 passed by the Chief Commissioner of Income Tax, Panchkula declining the prayer of the assessee-petitioner for gating exemption u/s 10(23C)(v) and (via) of the Income Tax Act, 1961 (for brevity ''the Act'') in respect of assessment year 2008-09 to 2010-.11. On the basis of the written submissions made by the assessee-petitioner views of the Commissioner of Income Tax were obtained who had stated that both the Assessing Officer and the Additional Commissioner of Income Tax, Gurgaon did not recommend the case of the petitioner-assessee for grant of exemption. Accordingly the Commissioner did not recommend their case for exemption. There are certain facts which is have gone into consideration for declining the exemption. There was a piece of land belonging to the petitioner-school-assessee at village Dhorka which was sold to a private builder on the plea that it would be hit by industrial zone. However, the builder has built flats on that area. The petitioner-assessee had purchased two farm houses constructed by M/s. Ansal Group of Builders who had built the same as a residential units. The Chairman of the petitioner-assessee along with his family members has been visiting the farm houses on week-end and no permission from any prescribed authority has been obtained for opening any educational institute on the property purchased. The income and expenditure account reveals that the land valued at Rs. 67,18,729 has been sold for a sum of Rs. 9,11,97,187 on 23-1-2007. There is a gross gain of Rs. 8,44,78,458. The major portion of the land was purchased on 10-1-2001 and area of 9 kanals 6 marlas was purchased on 21-11-2003. The explanation furnished by the petitioner-assessee has been found to be unsatisfactory. In paragraph 7 the Chief Commissioner has further concluded that after purchasing 45 kanals and 10 marlas land and 9 kanals 3 marlas of land in January, 2001 and November, 2003 in Dhorka there is nothing on the record to show that the petitioner-assessee intended to carry out any educational activities on the land. The only reason given for not using this land for educational activities and ultimately selling this land is that it was covered by industrial zone. However, the land purchased at Sadharana and Gopalpur also fall in the industrial zone. There is an obvious contradiction in the stand of the petitioner-assessee. The Chief Commissioner placing reliance on a judgment of Hon''ble the Supreme Court in the case of Municipal Corporation of Delhi Vs. Children Book Trust, has concluded as under:

14. It may be mentioned here that for the grant of exemption/approval u/s 10(23C)(vi), the basic requirement of Sub-clause (vi) of Clause (23C) of Section 10 is that the educational institution seeking exemption should be existing solely for the purpose of education and not for the purpose of profit. Here the emphasis is laid on the word ''solely''. Considering the facts of the present case in entirety as discussed above in foregoing paras, it cannot be said that the Society and the educational institution run by it are existing solely for the purpose of education and not for the purpose of profit. Accordingly, the application of the assessee seeking grant of exemption/approval is u/s 10(23C)(vi) for the assessment years 2008-09 to 2010-11 is hereby rejected.

2. Having heard learned Counsel at some length we do not find any ground to admit the petition. The order of the Chief Commissioner does not suffer from any legal infirmity and the same is within four corners of law. The writ petition is consequently dismissed.