(2014) 12 MP CK 0074

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2369/2014

Somani Charitable Trust APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:
Income Tax Act, 1961 — Section 10(22), 10(23C)(vi), 10(23C)(vi), 2, 2(15)

Citation : (2014) 12 MP CK 0074

Hon'ble Judges : S.K. Gangele, J;Rohit Arya, J

Bench : Division Bench

Advocate : V.K. Bhardwaj, Senior Advocate and Anvesh Jain, Advocate for the Appellant; D.P.S. Bhadoriya, Advocate for the Respondent

Judgement

S.K. Gangele, J.—The petitioners have filed this petition against the orders dt. 19.2.2009 (Annexure P/5) and dt. 20.3.2012 (Annexure P/7).

2. The petitioner No. 1 is a registered body registered under the M.P. Public Trust Act, 1951 by the Registrar. The petitioner Trust has been running following institutions :-

(i) RSC College of Nursing

(ii) RSC College

(iii) RSC School of Nursing, Balaghat.

(iv) Tam Bran School of Nursing

(v) RSC College of Healthcare & Management

(vi) Synergy College

(vii) N.K. Somani College

3. The petitioner Trust submitted an application in form 56-D for grant of exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 (hereinafter

referred to as "Act of 1961") from payment of income tax on the ground that object of the petitioner trust is to perform educational activities, hence, the petitioner be granted exemption from payment of income tax.

4. The authority after perusal of the record dismissed the application submitted by the petitioner trust on the ground that the petitioner trust did not fulfill the criteria.

5. Section 10(23C)(vi) of the Act of 1961, which provides exemption from payment of income tax, 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) or sub-clause (iiiad) and which may be approved by the prescribed authority,"

6. The objects of the petitioner trust have been mentioned in the order - Annexure P/7, which are as under :-

(i) To construct, maintain, equip and start Dental College, College of Nursing, School of Nursing, College of Physiotherapy, College of Pharmacy, and Other Paramedical Institutions, Medical College(s), Hospital or Dispensary or Clinic or other institution of similar nature including mobile clinical van anywhere in India and to provide, establish, endow, furnish and fit up with all necessary furniture, instruments and for the reception and treatment of persons suffering from illness and/or mental defectiveness or accident or for the reception and treatment or persons during convalescence or of persons requiring medical attention or rehabilitation and in which they may remain for such period and on such terms and conditions as the trustees may prescribe or in which they may be advised or treated about patients, to provide accommodation for the reception treatment and care of all such patients and to provide facilities or medical, surgical and maternity attendance, nursing, funds, medical and all things and appliances or medical, surgical, dietetic and sanitary character.

(ii) To manage, maintain and/or grant aid to hospitals of institutions generally for providing medical relief to people in India.

(iii) For the aid of object specified in clause (i) & (ii) provide for, educate and train medical students and nurse and manage suitable educational institutions for the purpose.

(iv) To establish, maintain, assist, support and encourage or promote in India and when deemed proper or expedient for the purposes of medical relief in the form of hospital or in connection therewith or attached thereto all or any of the following institutions, viz.

(a) Nursing Hospital, Homes, Wards and Institutors .

(b) Ambulance Corps, with or without classes for imparting education, relief and training in ambulance work.

(c) Creches and children''s Hospital/ Clinics.

(v) To establish, maintain, assist, encourage and/or other supports to institutions, funds, trust or persons for promoting medical research work.

(vi) To send patients and maintain them in convalescent homes and other similar institutions in such manner and to such extent as may from time to time be deemed expedient and to provide creches and other Mechanical side for patients and in sending patients to their homes or elsewhere.

(vii) To undertake the management of the Hospital, clinics or dispensary or other institutions, of similar nature and to do all necessary work to provide better medical and surgical facilities

(b) To organise the programmes for relief of the poor.

(c) To import education in every faculty establishing schools, colleges, universities.

(d) To undertake the programmes for advances of any other object of general public utility."

7. From perusal of the aforesaid objects of the petitioner Trust, it is clear that the sole purpose of the trust is not the education only. As per the second object, the Trust shall manage, maintain and/or grant aid to hospitals of institutions generally for providing medical relief to people in India and also maintain and assist medical relief in the form of hospital to other institutions. Similarly, sixth object of the petitioner trust is to send patients and maintain them in convalescent homes and other similar institutions in such manner and to such extent as may from time to time be deemed expedient and to provide creches and other Mechanical side for patients and in sending patients to their homes or elsewhere.

8. Hon''ble Supreme Court in the case of The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, , has held as under in regard to the word ''education'' used under Section 2(15) of the Act of 1961.

"The sense in which the word "eduction" has been used in section 2(15) in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, accordingly to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to you knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser through poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word education is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."

9. Hon''ble Supreme Court in American Hotel and Lodging Association Educational Institute Vs. Central Board of Direct Taxes and Others, has considered the insertion of Section 10(23-C)(vi) vide the Finance (No.2) Act, 1998 and held as under:-

"40. We shall now consider the effect of insertion of provisos to Section 10(23-C)(vi) vide the Finance (No.2) Act, 1998. Section 10(23-C)(vi) is analogous to Section 10(22). To that extent, the judgments of this Court as applicable to Section 10(22) would equally apply to Section 10(23-C)(vi). The problem arises with the insertion of the provisos to Section 10(23-C)(vi). With the insertion of the provisos to Section 10(23-C)(vi) the applicant who seeks approval has not only to show that it is an institution existing solely for educational purposes [which was also the requirement under Section 10(22)] but it has now to obtain approval from the PA, in terms of Section 10(23-C)(vi) by making an application in the standardised form as mentioned in the first proviso to that section. That condition of obtaining approval from the PA came to be inserted because Section 10(22) was abused by some educational institutions/universities. This proviso was inserted along with other provisos because there was no monitoring mechanism to check abuse of exemption provisions. With the insertion of the first proviso, the PA is required to vet the application. This vetting process is stipulated by the second proviso."

10 From the aforesaid judgment of the Hon''ble Supreme Court, it is clear that after insertion of the proviso to Section 10(23-C)(vi) of the Act of 1961, the applicant has not only to show that it is an institution existing solely for educational purposes, but it has to obtain approval from the PA. The word ''Institution existing solely for education purposes" is made. As noted above in this order, after reading the object of the petitioner trust, it can not be said that the petitioner trust exists solely for educational purposes. Apart from this, the authority further observed that the institution had employed Mr. Ajay Chandak and Smt. Mamta Chandak, who had drawn salary for more than Rs.10,000/-, but no details have been furnished to the authority in regard to related persons of the Trustees. The relatives of the members of the trustees and family members have been placed on the top bracket of the salary drawers and those posts were created to provide money to them in the guise of salary. Hence, the relatives of

the trustees were deriving benefits from the Trust. The trust has generated systematic surplus year after year. No reasons were assigned for generating this surplus.

11. Learned Senior Counsel appearing on behalf of the petitioners has relied on the following judgments in support of his contentions and contended that the purpose of the petitioner trust is educational purpose :-

(i) American Hotel and Lodging Association Educational Institute Vs. Central Board of Direct Taxes and Others, .

(ii) Aditanar Educational Institution Vs. Additional Commissioner of Income Tax,

(iii) Little Angels Vs. Union of India - (2011) 2 MPJR 253

(iv) Writ Tax No. 1714/20 - High Court of Allahabad - Neeraj Janhitkari Vs. Chief Commissioner of Income Tax.

(v) Digember Jain Society for Child Welfare Vs. Director General of Income Tax (Exemptions), .

(vi) M/s. Kailash Narayan Gupta Vs. ACIT Jhansi - (2012) 6 Tax Corp (AT) 27900 (Agra).

(vii) Jaat Education Society Vs. CR Polytechnic Delhi - (2013) 7 Tax Corp (AT) 3310 (Delhi).

(viii) Writ Petition (Tax) No. 937/2011 - Simpkins School Vs. Director General of Income Tax (Investigation) & Others

12. After analysing the objects and facts of the case, we find no reason to interfere and set aside the conclusion reached by the authority to the effect that the petitioner institution does not fulfill the requirement of Section 10(23-C)(vi) of the Act of 1061, hence, it is not eligible to get exemption from payment of income tax. It is well settled principle of law that exemption provisions in regard to grant of exemption from payment of tax has to be construed strictly in order to see that ineligible person or persons could not get benefit of tax exemption.

13. Consequently, we do not find any merit in this petition. It is hereby dismissed.

No order as to costs.

