(2013) 09 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (C) No. 2626 of 2012

Sree Kanya Pathshala Trust and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 267 CTR 283 : (2014) 1 GLD 375 : (2014) 2 GLT 806 : (2014) 360 ITR 60

Hon'ble Judges : A.K. Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : Ashok Saraf, Ms. M.L. Gope, Ms. N. Hawelia, A. Goyal, K. Choudhury, P. Baruah, K. Agarwal and M. Dey, for the Appellant; S. Saikia, for the Respondent

Judgement

Ujjal Bhuyan, J.—This petition under article 226 of the Constitution of India challenges the legality and validity of the order dated October 12, 2011, passed by the Chief Commissioner of income tax, Shillong, rejecting the application of the petitioners seeking exemption u/s 10(23C)(vi) of the income tax Act, 1961 ("the Act") and further seeks a declaration that petitioner No. 2 is entitled to exemption under the aforesaid provision. Facts of the case may be briefly noted.

2. Petitioner No. 1 is a trust called "Sree Kanya Pathshala Trust". The main object of petitioner No. 1 is to carry out educational activities, particularly to impart education to girls. Petitioner No. 2 is one of the units of petitioner No. 1.

3. Since petitioner No. 2 is an educational institution existing solely for educational purpose and not for the purpose of profit, it sought for exemption u/s 10(23C)(vi) of the Act. However, the Assessing Officer, i.e., the Deputy Commissioner of income tax, Circle-Tinsukia, insisted on production of approval of the Chief Commissioner of income tax and in this connection, issued notice dated July 28, 2010. At that stage, petitioner No. 1 by his letter dated July 31, 2010, requested the Chief Commissioner of income tax, Shillong, for an early action on the application seeking exemption of income from payment of income tax u/s 10(23C)(vi) of the Act.

4. Ultimately, the Chief Commissioner of income tax, Shillong, passed order dated October 12, 2011, rejecting the prayer of the petitioners by declining to grant approval u/s 10(23C)(vi) of the Act.

5. Aggrieved, the petitioners have preferred the present writ petition seeking the reliefs as indicated above.

6. Heard Mr. Kamal Agarwal, learned counsel for the petitioners, and Mr. S. Saikia, learned standing counsel, income tax Department.

7. While Mr. Agarwal, learned counsel for the petitioners submits that the Chief Commissioner of income tax had committed a manifest error of law and fact while rejecting the claim of the petitioners for exemption of income from payment of income tax u/s 10(23C) of the Act, learned standing counsel of the income tax Department, on the other hand, supports the impugned order.

8. Submissions made have been considered.

9. Short point for consideration is the entitlement of petitioner No. 2 to exemption of income from forming part of total income for the purpose of levy of income tax u/s 10(23C) of the Act and, consequently, the legality and validity of the impugned order dated October 12, 2011.

10. At the outset, we may refer to the relevant provisions of the Act. Section 10 of the Act deals with incomes which do not form part of total income. The said section provides that in computing the total income of a previous year of any person, any income falling within any of the clauses mentioned in the said section shall not be included. Clauses (22) and (22A) of the Act, which were omitted with effect from April 1, 1999, have since been re-enacted in section 10(23C). Sub-clause (iiiab) of section 10(23C) provides for any university or other educational institution existing solely for educational purposes and not for the purposes of profit and which is wholly or substantially financed by the Government. Sub-clause (iiiad) speaks of any university or other educational institution existing solely for educational purposes and not for the purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed. As per sub-clause (vi), income of any university or other educational institution existing solely for educational purposes and not for the purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority, may be excluded from the total income for the purpose of income tax. As per the relevant rule, the prescribed authority is the Chief Commissioner or the Director General, as the case may be.

11. In Aditanar Educational Institution Vs. Additional Commissioner of Income Tax, the hon''ble Supreme Court examined the entitlement of an educational institution to exemption under the then section 10(22) of the Act, the provisions of which have since been re-enacted in section 10(23C) of the Act. The apex court considered the scope of section 10(22) of the Act. It was held that an

educational society or a trust or other similar body running an educational institution solely for educational purposes and not for the purpose of profit could be regarded as "other educational institution". It was further observed that the applicability of section 10(22) should be evaluated or investigated every year and only if it is found that the institution exists for educational purposes in the relevant year and even if any profit results which is only incidental to the purpose of education, the income would be exempt. It was held as under (page 318):

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 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.

12. Having noticed the legal provisions, we may now refer to the trust deed of petitioner No. 1, which runs petitioner No. 2.

13. The trust deed was executed on April 10, 1995, creating a charitable trust called "Sree Kanya Pathshala Trust", having its office at Tinsukia. Though a number of objects of the trust have been enumerated, the basic object appears to be to provide and maintain educational institutions in the country. As noticed above, though ancillary objects are there but establishment of educational institutions and maintaining them appears to be the core objective of the trust. Clause 3 of the trust deed enumerates the objects of the trust, which are as under:

3. The objects of the trust shall be as follows:

(a) To found, provide, carry on maintain and/or assist in the maintenance in India, of schools, including primary, middle, high school, higher secondary school and college for boys and/or girls where students may obtain classical, cultural, physical, religious, commercial, medical, technical, scientific and general knowledge of the highest order, throughout the Union of India.

(b) To take over, the existing Shri Kanya Pathshala of Tinsukia with all assets liabilities rights and obligations thereof and all land property including furniture and fixture belonging if any to the said school and maintain and run the same by enlarging and enhancing its scope and standard with suitable accommodation and provision for qualified teaching staff, getting recognition and aids from the Government, and strive for the all out improvement of the institution.

(c) to provide for research work, and for the delivery and holding of lectures, demonstrations, exhibitions, public meetings, classes and conferences calculating directly or indirectly to propagate and advance the cause of religious teachings particularly of the ancient Hindu culture based on the old Hindu scriptures, including vedas shastras and puranas, Ramayan and Mahabharat, etc.

(d) To provide for, establish and maintain and run libraries, museums societies, lecture halls, and other institutions and to furnish the same with books reviews magazines, newspapers and other publications.

(e) To collect and preserve old classical manuscripts, writings and literature of all kinds and painting curies and sculptures.

(f) To print, publish, distribute and sell, books, newspapers, magazines, pamphlets, leaflets, brochures, souvenirs and other publications having its objects teaching, propagation, promotion and development of ancient Hindu culture, literature science and technology, and to keep reserved the copyright of all or any of such publications for the trust, if considered necessary.

(g) To award grant and present stipends, scholarships, prizes, bonus, medals, study-loans and other allowances, concessions, gratuities to students, workers, writers, authors, editors and other interested persons in the advancement of education and culture.

(h) To declare and give bonus, gratuities pensions or other concessions and allowances to persons who are or were in the employ of the trust or of any institution or institutions maintained and run by the trust or the families or dependants of such persons.

(i) To help needy persons, whether victims of flood, epidemic, earthquakes, war, civil disturbances or any other cause whatsoever with medicines, clothes, accommodations and rendering all other helps in such manner as the Trustees shall from time to time think fit and proper.

(j) To extend help and relief in the form of free distribution of medicine or giving aids or donations in money or kind to institutions, societies, and other bodies of medical relief or for advancement of art and culture, and for the overall mental and physical upliftment of the society in general.

(k) To establish support and maintain institution or institutions and societies intended to relieve poverty and distress such as hospital, alms-houses, or orphanages, homes for working girls, homes for refugees, homes for disabled and crippled persons and helpless widow, etc.,

(l) To establish support and maintain religious and/or social institutions for promoting and spreading religious and social consciousness amongst people, establishing and maintaining temples, and monument and preserving or promoting the preservation of lands, tenements, temples monuments or any other plan or thing of historic interest.

(m) To purchase take on lease or hire or otherwise acquire any estate land building, easements or other rights or interests in immovable properties and all kinds of movable properties and to sell, let on lease or otherwise dispose of or grant rights over any real property or other properties whatsoever belonging to the trust.

(n) To establish support and maintain or assist in the preservation of wells, tanks, or any other means of water supply, parks, dharamshalas, atithishalas, rest-houses, roads, paths, water ways, common grazing grounds, veterinary hospitals, institutions catering the general welfare of animal life, cremation grounds clubs and other public utility subjects for the use and benefit of the general public with the sole object of public charity and without any purpose to make gains.

(o) To do all or such other lawful things as are incidental or conducive to the attainment of any one or more of the above or similar objects.

(p) To collect raise and receive subscriptions, donations and gifts in cash or kind for all or any of the objects and to apply the same in accordance with the conditions, if any, presented by the donors and agreed to by the trustees not beyond the objects of this trust.

(q) To take or otherwise acquire and hold shares in any company or corporation.

(r) To borrow or raise money with or without security and on such terms and conditions as the trustees may think fit and proper.

(s) To work for all or any other charitable purposes which may benefit the people in general provided always that and it is hereby declared that if any one or more of the objects specified above are held not to be for public charity, the trustees shall not carry out such object or objects as if the same are not incorporated in these presents, but the validity of the trust created by these presents as a trust for charitable purposes shall not be affected in any manner.

14. The trust deed has to be read as a whole. If the object clause of the trust deed is read in a holistic manner, it would show beyond any reasonable doubt that the principal objective of the trust is to establish and maintain educational institutions in the country.

15. We may now refer to the relevant portion of the impugned order passed by the Chief Commissioner, which is as under:

The applicant-school has its own bye-laws and constitutions wherein the objects of the school are also mentioned. However, the school being a unit of a trust, it is governed and administered by the trust deed of ''Sree Kanya Pathshala Trust'' whose objectives are not solely for carrying out educational activities. The applicant has also not complied with regards to non-application of 85 per cent of its income towards educational and charitable purpose. The applicant''s educational activity is limited to Tinsukia district only of the State of Assam.

Furthermore, no legal documents could be produced by the assessee which prohibits application by the assessee-trust of the income derived from educational institutions for other charitable objects of the trust.

Final opportunity was granted and the case was fixed for hearing on September 22, 2011, but none appeared.

Considering the above issues, I am not inclined to grant approval u/s 10(23C)(vi) in the given circumstances and, accordingly, the application for approval u/s 10(23C)(vi) is hereby rejected.

16. A careful reading of the impugned order would show that 2 (two) factors weighed with the Chief Commissioner while rejecting the claim of the petitioners. Firstly, a view was taken that all the objectives of the trust are not solely for carrying out educational activities which would be evident by the non-application of 85 per cent of its income towards educational and charitable purpose. The second factor as expressed in the impugned order is that educational activity of the trust is limited to only Tinsukia district in the State of Assam.

17. In our view, both the factors and the decision of the Chief Commissioner based thereon are fallacious. In Aditanar Educational Institution (supra), the hon''ble Supreme Court held that availability of exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit. If after meeting the expenditure requirements, any surplus receipts are available incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes. The decisive or acid test as pointed out by the apex court is whether on an overall view taken, the object is to make profit. In evaluating or appraising the above aspect, the distinction between the corpus, the objects and the powers of the concerned entity should be borne in mind. Thus, an overall view has to be taken.

18. Applying the above principle, we are of the view that the decision of the Chief Commissioner dated October 12, 2011, cannot be sustained. The same is accordingly set aside and quashed. The matter is remanded back to the Chief Commissioner of income tax, Shillong, for a fresh decision in accordance with law. Such decision shall be taken within a period of 4 (four) weeks from the date of receipt of a certified copy of this order. The writ petition is allowed but without any order as to costs.

