

(2011) 10 P&H CK 0114

High Court Of Punjab And Haryana At Chandigarh

Case No: Writ Petition No. 4155 of 2011

Sanatan Dharam Shiksha Samiti

APPELLANT

Vs

Chief Commissioner of Income
Tax

RESPONDENT

Date of Decision: Oct. 3, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 10, 10(23C)(vi), 2, 2(15)

Citation: (2012) 253 CTR 518 : (2012) 206 TAXMAN 17

Hon'ble Judges: Hemant Gupta, J; G.S. Sandhawalia, J

Bench: Division Bench

Advocate: Sandeep Goyal, for the Appellant; Urvashi Dhugga, for the Respondent

Final Decision: Allowed

Judgement

G.S. Sandhawalia, J.

This order will dispose of two Civil Writ Petn. Nos. 4119 and 4155 of 2011 as facts and law involved in these petitions are common. However, the facts of Civil Writ Petn. No. 4155 of 2011 are being adverted to. The petitioners are aggrieved by the order dt. 29th Sept., 2010 whereby respondent dismissed their applications in Form 56D for grant of exemption under s. 10(23C)(vi) of the IT Act, 1961 (hereinafter referred to as "the Act") for the asst. yr. 2009-10.

2. The petitioner-assessee filed an application dt. 27th Sept., 2009 in Form 56D seeking grant of exemption/approval under s. 10(23C)(vi) of the Act on the ground that it was a society registered on 16th Sept., 1992 under the Societies Registration Act, 1860 and for the last 18 years engaged in the activity of providing education and relied upon aims and objects mentioned in the memorandum of association to press forth the ground that it exists solely for educational purposes and not for purposes of earning profit. Information was sought by the office of the ITO from the petitioner society on 4th May, 2010 whereby it was asked to furnish various

information including activities undertaken by the petitioner society, list of trustees and copy of accounts etc. The said information was accordingly furnished on 17th May, 2010 to the IT Department and it was also brought to the notice of the said officer that the petitioner society was running two schools at Hansi and details of strength of students and ownership of lands and rooms were also given. Thereafter, fresh information was asked for on 20th Sept., 2010 vide Annex. P-6 as to whether the society exists solely for educational purposes or it has other activities also which were not related to education. The petitioner was also asked to explain the surplus for the last three assessment years i.e. 30.54 per cent, 45.32 per cent and 48.8 per cent, and the petitioner was asked to analyse the above profit with respect to utility thereof. Accordingly, detailed reply was submitted on 22nd Sept., 2010 and stress was laid down that aims and objects of the society were mainly in the context of imparting education and (sic) establishing schools, hostels, libraries, reading rooms and playgrounds etc. And further that income was not to go to the members of the society in any manner rather the society exists solely for imparting education and falls within the ambit of s. 10(23C)(vi) of the Act. As far as the issue of surplus of the society and profit, explanation was given in the reply that percentage of surplus had been miscalculated by not excluding depreciation and adding capital expenditure incurred for the purpose of benefit of the society. This explanation was further elaborated in a representation dt. 28th Sept., 2010 and stress was laid down on s. 2(15) of the Act that education itself is a charitable purpose and the term is wide and extensive. Reliance was also placed on various judgments including given the one by the Division Bench of this Court on 29th Jan., 2010 in [Pinegrove International Charitable Trust Vs. Union of India \(UOI\) and Others](#), and also the judgment of the same Division Bench dt. 29th Jan., 2010 in Civil Writ Petn. No. 858 of 2009 (Kshatriya Sabha, Maharana Partap Bhawan, Kurukshetra vs. Union of India & Anr.) whereby a number of writ petitions including the petitioners' writ petition being Civil Writ Petn. No. 8258 of 2009 for the asst. yrs. 2005-06 to 2008-09 had been decided in favour of the assessee. Stress was again laid down on the fact that depreciation had not been applied for calculating the percentage of surplus and a chart was prepared wherein percentage of surplus was accordingly reduced after calculating depreciation. The respondent, however, vide order dt. 29th Sept., 2010 rejected the application of the petitioner and concluding portion of the impugned order is reproduced hereunder : In conclusion, it may be mentioned here that for the grant of exemption/approval under s. 10(23C)(vi), the basic requirement of sub-cl. (vi) of cl. (23C) of s. 10 is that the educational institution seeking exemption should be existing solely for the purposes of education and not for the purposes of profit. Here the emphasis is laid on the word "solely". Keeping in view the above facts, it is held that in the light of observations of the Supreme Court which were not taken note of in the case of Pinegrove International Charitable Trust by the Hon'ble Punjab & Haryana High Court (Civil Writ Petn. No. 6031 of 2009) order dt. 29th Jan., 2010 and the fact that the profits are held not to be incidental as they do not arise merely for one year but

systematically, the educational institutions namely "S.D. Modern Public School and S.D. Modern Shishu Public School" do not satisfy the basic condition of existing solely for educational purpose and not for profit as per s. 10(23C)(vi) of IT Act, 1961. The approval sought cannot be granted and the application is dismissed.

3. The petitioner is, thus, aggrieved by the said order of the respondent whereby its application for exemption has been rejected and whereas the respondent has sought to distinguish the Division Bench judgment in Pinegrove International Charitable Trust's case (supra) on the ground that the Division Bench judgment had not taken note of observations of the Hon'ble Supreme Court regarding profiteering in [P.A. Inamdar and Others Vs. State of Maharashtra and Others](#),

4. Notice of motion being issued, respondent has also filed written reply through the same officer who has passed the impugned order justifying the said order and rejecting the applications on the ground that reasonable profit should ordinarily vary from 6 per cent to 15 per cent and in the present case surplus amounts to as high as 42.06 per cent.

5. After hearing the learned counsel for the parties, we find that the matter is squarely covered by the decision of the Division Bench of this Court in Pinegrove International Charitable Trust's case (supra) wherein the provisions of s. 10(23C)(vi) of the Act were discussed and the following substantial questions of law were determined by the Division Bench :

(A) Whether an educational institution would cease to exist "solely" for educational purposes and not for purposes of profit merely because it has generated surplus income over a period of 4/5 years after meeting its expenditure ?

(B) Whether the amount spent on acquiring/constructing capital assets wholly and exclusively becomes part of the total income or it becomes entitled to exemption under s. 10(23C)(vi) of the Act ?

(C) Whether an institution registered as a society under the Societies Registration Act, 1860, lose its character as an educational institution, eligible to apply for exemption under s. 10(23C)(vi) of the Act ?

6. After considering the case law on the subject, the Division Bench came to categorical conclusion after relying upon the judgments of Hon'ble Supreme Court in [Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association](#),) and [Aditanar Educational Institution Vs. Additional Commissioner of Income Tax](#), that the test of predominant object of the activity is to be seen whether an institution exists solely for education and not to earn profit and (sic) would not only be difficult of practical realisation but would also reflect unsound principle of management. If no profit arises from the activity, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit.

7. In the present case, the petitioner had earlier approached this Court for the asst. yrs. 2005-06 to 2008-09 by way of Civil Writ Petn. No. 8258 of 2009 which was decided on 29th Jan., 2010 along with Civil Writ Petn. No. 858 of 2009 and this Court had quashed the order declining exemptions and left it open to the respondent to pass a fresh order in the light of various propositions of law culled out by the Division Bench.

8. The observations of respondent whereby it has sought to decline the case of the petitioner for the asst. yr. 2009-10 by placing reliance upon the judgment of the Hon"ble Supreme Court in P.A. Inamdar's case (supra) would be of no help since the issue in the said case was not the issue under the IT Act. The Hon"ble Supreme Court was only deciding the question of minority and non-minority institutions, percentage of reservation/control over the said institutions, fixation of quota of admissions in respect of unaided institutions and fee structure etc. Therefore, the reasoning given by respondent is totally perverse and not sustainable. The respondent has only relied upon few observations made regarding fixation of fee while losing sight of the fact that what was the main issue that was being decided. The issue having been directly decided by the Division Bench of this Court, is binding upon the respondent.

9. Respondent has also rejected the application of the petitioner on the ground that assessee's aims and objects are not related to educational purposes. The aims and objects of the assessee's society are reproduced below :

1. Arrangement for education and moral education for young and Kinder Garten girls and boys.

2. Arrangement for imparting education to the students based upon Indian culture and philosophy.

3. Arranging for appropriate programmes for physical, mental, spiritual and moral education to the students.

4. Arrangement of schools, hostels, library, auditoriums and playgrounds for the students. Running a school in the name of S.D. Modern Public Secondary School at Hansi from Class 6th to Class Plus 2 for achieving objects at 1 to 4 mentioned aforesaid.

5. Purchase of land for running the school, raising building thereon and for promoting land in the premises of Sanatan Dharam Kanya High School, Hansi and raising building thereon as per the terms and development work thereon on the various properties of society from time to time and repair thereof, changing structures as per requirement of the building, extension of the buildings and doing all related works from time to time. Selling the movable and immovable properties of the society as per requirement and distribution of the money received and forming society etc.

6. On the land obtained from Sanatan Dharam Kanya High School, Hansi and building raised therein including its extension shall not be sold off nor given on rent or lease nor it will be used for residential purpose.

7. Providing free education and residence to poor children and helping them economically.

8. Providing scholarships to bright students.

9. Using the income and funds of the society for the objectives of the society.

10. Helping the working organisations as per objectives of the society.

11. Collecting the money from public as donations for achieving of objects of the society. Obtaining grant and aids from Central Government, State Government, other Government, semi-Government and other organisations.

12. The income, funds and property of the society would be used for the purposes of society only and no member or office bearer of the society would take any dividend, bonus or benefit in direct or indirect manner. In case the society is wound up, then all the properties, receivables and payables of the society shall be passed on to a society who has similar aims and objects or would be passed on to Central Government or Haryana State Government

13. As per s. 2 of the Societies Registration Act, 1860 (as amended by the Punjab Act, 1957), the working the society has been entrusted to the following founder members of the society whose names, addresses, profession and designation are given hereunder.....

10. A perusal of the above aims and objects goes to show that the society which was running two schools from Class VI to +2 was devoted solely for the purpose of education and development work of the said society and as per cl. (6) it was further provided that land shall not be sold off nor used for residential purposes. Thus, the reasoning given by the respondent on this account is also perverse. The respondent has not taken into account that it has failed to record a finding that the accumulation of surplus of more than 15 per cent of the income is accumulated on or after the 1st day of April, 2002, the period of accumulation of the amount exceeding 15 per cent of its income has not exceeded five years and, thus, the petitioner-assessee is not entitled for the said exemption.

11. In view of above, both the writ petitions are allowed and the impugned orders declining the application for exemption under s. 10(23C)(vi) of the Act are quashed. Respondent is directed to redecide the said issue by keeping in mind the principles laid down in case of Pinegrove International Charitable Trust (supra) and the earlier order dt. 29th Jan., 2010 passed in Civil Writ Petn. No. 858 of 2009 and other connected petitions including the petitioner's writ petition being Civil Writ Petn. No. 8258 of 2009 for the asst. yrs. 2005-06 to 2008-09. A photocopy of this order be

placed on the file of the connected case.