

(2010) 11 CAL CK 0023

Calcutta High Court

Case No: Writ Petition No. 21074 (W) of 2010

Institution of Engineers (India)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Nov. 12, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 35(1)

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: J.P. Khaitan, S. Banerjee and Soumitra Datta, for the Appellant; R.N. Bandyopadhyay and S.B. Saraf, for the Respondent

Judgement

Soumitra Pal, J.

In this writ petition, the Petitioner stated to be an organization duly recognized by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India (for short the "Department") has challenged the order dated September 30, 2009 passed by the Central Board of Direct Taxes rejecting the application for approval u/s 35(1)(ii) of the income tax Act, 1961 (for short "the Act"), on the ground that though the mode of application for renewal of recognition by the Council for Scientific and Industrial Research and the manner of exemption before the income tax authorities are similar and though the Petitioner has been accorded recognition by the Department from April 1, 2010 to March 31, 2013, however, the Central Board of Direct Taxes has turned down the application for renewal of approval by passing a cryptic order though necessary papers, documents, articles and publications, as sought for by the authorities, were furnished. Further, though under the Act the Central Government is the authority to grant approval, however, an undisclosed "prescribed authority" has passed the impugned order. Moreover, as the application has been rejected, the Petitioner was entitled to be heard.

2. Learned advocate appearing on behalf of the Revenue submits that the order under challenge is just and proper.
3. In order to appreciate the issue it is necessary to set out the order under challenge, which is as under:

Government of India Ministry
of Finance Department of Revenue
Central Board of Direct Taxes
New Delhi, the 30th September, 2009

To
M/s. The Institution of Engineers (India),
8, Gokhle Road Kolkata-700 020.

Sir,

Subject: Application for renewal of approval u/s 35(1)(ii) of income tax Act, 1961, for the period from 1-4-2007 onwards--reg.

Please refer to the above application.

After careful examination of the application as well as other details furnished by you from time to time, it is noticed that adequate scientific research activity, which is an essential requirement to qualify for approval u/s 35(1)(ii) of the income tax Act, 1961, has not been carried out by you. Accordingly, the "prescribed authority" has held that M/s. The Institution of Engineers (India) is not a fit case for grant of approval under that section. It is, therefore, regretted that your application for approval u/s 35(1)(ii) of the income tax Act, 1961, has been rejected.

Yours sincerely,

Under Secretary (ITA.II)

4. It is evident from the impugned order that though it has been found by the authority "that, adequate scientific research activity, which is an essential requirement to qualify for approval u/s 35(1)(ii) of the income tax Act has not been carried out" by the Petitioner and it has been concluded that the application of the Petitioner "is not a fit case for grant of approval", however, no reason has been mentioned in support of the order. In the order impugned documents, journals, articles and other papers furnished by the Petitioner in support of its contention find no mention. Further, as correctly submitted by the learned senior advocate for the Petitioner, the designation of the "prescribed authority" has not been disclosed. In short, the impugned order is cryptic as it does not disclose the basis or reasons for rejection. Moreover, in my view, in case of rejection of application a person is

entitled to be heard. However, in the instant case hearing was not granted. Therefore the impugned order dated September 30, 2009 under challenge cannot be sustained and is, thus, set aside and quashed. Hence, the writ petition is allowed. Therefore, I direct the Central Board of Direct Taxes to forward the application to the authority concerned of the Central Government under the Rules of Business within a fortnight from the date of presenting the certified copy of this order and thereafter the said authority shall dispose of the application of the Petitioner for renewal of approval u/s 35(1)(ii) of the Act for the period from April 1, 2007 by passing a reasoned order within eight weeks to be communicated to the Petitioner after giving an opportunity of hearing. At the time of hearing the Petitioner is at liberty to rely on documents in its possession and the authority under the Central Government in its reasoned order shall deal with the same.

5. I make it clear that I have not gone into the merits of the case and all points are left open to be dealt with by the authority under the Central Government.

6. Since the writ petition is disposed of at the stage of admission without calling upon the Respondents to file affidavits controverting the allegations in the petition, allegations made are deemed not to have been admitted by them.

7. There will be no order as to costs.

8. Let urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.