

(2002) 12 DEL CK 0077

Delhi High Court

Case No: IT Appeal No. 181 of 2002, CM No. 79 of 2002 5 December 2002

Commissioner of Income Tax

APPELLANT

Vs

Lagan Kala Upvan

RESPONDENT

Date of Decision: Dec. 5, 2002

Citation: (2003) 126 TAXMAN 205

Hon'ble Judges: Mahmood Ali Khan, J; D.K. Jain, J

Bench: Full Bench

Advocate: R.D. Jolly and Subhash C. Sharma, for the Revenue, M.L Goyal and H.L. Dasi, for the assessee, for the Appellant;

Judgement

D.K. Jain, J.

CM No. 79/2002

Allowed subject to just exceptions.

ITA No.18/102

An order dated 3-1-2002, passed by the Income Tax Appellate Tribunal, Delhi Bench-E, New Delhi in ITA No. 5443/Del./96 in respect of the assessment year 1993-94 is under challenge in this appeal by the revenue u/s 260A of the Income Tax Act, 1961 (for short the Act).

Briefly stated, the material facts are as follows

During the course of assessment proceedings of the respondent Society, hereinafter referred to as the assessed, for the aforementioned assessment year, the assessing officer noticed that the assessed had given interest free loans to : (i) its Secretary and Principal of the School namely, Shri G.C. Lagan in assessment years 1987-88, 1991-92 and 1992-93; (ii) its Vice Principal namely, Shri Bharat Bhushan and (iii) one Bal Vikas Public School, in which the said Shri G.C. Lagan was also one of the trustees. Besides, the assessed had also paid rent for the use of building, belonging

to one of the trustees, for running the school. He, thus, felt that by giving these loans and paying the rent, the assessed had violated the provisions of section 13(1)(c), read with section 13(3) of the Act. He also observed that since the assessed had earned some income in the running of the schools, there was profit motive in its activities. It was also observed by him that since the society had claimed depreciation, it had an element of business in its operations. Accordingly, he denied exemption to the assessed u/s 10(22) of the Act.

Aggrieved, the assessed preferred appeal to the Commissioner of Income Tax (Appeals) (in short the Commissioner (Appeals)). The Commissioner (Appeals), while allowing assessed's appeal and directing the assessing officer to allow exemption u/s 10(22) of the Act, took into consideration the following factors : (1) no loan was given to said Shri Lagan during the relevant assessment year and the loan taken earlier was refunded to the society; (ii) the interest free loan given to Shri Bharat Bhushan in his capacity as the Vice Principal of one of the schools run by the assessed was also received back; (iii) the portion of the house, on which rent had been paid was ultimately purchased by the assessed; and (iv) the loan given to another society for construction of building for educational purpose had been received back with no interest charged thereon. The Commissioner (Appeals) also observed that the assessed has been running educational institutions without any profit motive and no part of profit was shared by any of the members of the assessed and that during its existence for the last 25 years, the assessed had not carried any activity other than education and further it has not collected any donations or contributions.

The revenue challenged the order of the Commissioner (Appeals) before the Tribunal, but without any success. The Tribunal, while observing that on the facts and circumstances, they were satisfied with the reasoning and the conclusions arrived at by the Commissioner (Appeals), affirmed the view taken by him. Hence the present appeal.

The following questions, stated to be substantial questions of law, have been proposed in the appeal memo :

"1. Whether, on the facts and in the circumstances of the case, the ITAT was correct in upholding the order of Commissioner (Appeals) and thereby granting the benefit of section 10(22) to the assessed ?

2. Whether, on the facts and in the circumstances of the present case, the judgment of Hon"ble Supreme Court in the case of MCD v. Children Book Trust (1992) 63 Taxman 385 is applicable ?

3. Whether ITAT was right in holding that Commissioner (Appeals) has rightly allowed the claim of assessed u/s 10(22) of the Act even in respect of the Society's independent income and when there are infringement u/s 13 of the Income Tax Act, 1961 ?"

We have heard learned counsel for the parties. It is submitted by Mr. R.D. Jolly, learned senior standing counsel for the revenue, that the view taken by the Tribunal is vitiated because the Tribunal as also the Commissioner (Appeals) has failed to take into consideration a very vital fact that had the assessed not given the interest free loans to the aforementioned three persons, more funds would have been available with it to carry on its activities, in furtherance of its objects, more effectively. As a last resort, learned counsel would submit that the Tribunal having failed to record its independent reasons for coming to the conclusion that the assessed is entitled to exemption u/s 10(22) of the Act, its order gives rise to a substantial question of law. In support of this proposition, learned counsel has placed reliance on the decision of the Madras High Court in [Vinjane Centre Vs. Dy. Commissioner of Income Tax](#), wherein it has been held that the Tribunal being the final fact finding authority, it is expected to apply its mind and record separate findings on each issue and an order merely quoting the findings recorded by the Commissioner (Appeals) does not show application of mind by the Tribunal and, Therefore, cannot be sustained.

Mr. Goyal, learned counsel for the assessed, on the other hand, supporting the orders passed by both the appellate authorities, submits that any alleged violation of section 13(1)(c) is of no consequence insofar as the question of exemption u/s 10(22) of the Act is concerned. He also states that except for the assessment year in question and assessment year 1997-98, right from assessment year 1970-71 till date, the assessed has been granted exemption u/s 10(22) of the Act.

We are of the view that the contentions urged on behalf of the revenue are without any substance. In fact, the main ground, viz., violation of section 13 of the Act, on which the exemption was denied by the assessing officer, has no bearing on the question whether the assessed exists solely for educational purposes and not for purposes of profits, so as to fall within the ambit of section 10(22) of the Act. The test to determine when an institution would qualify for exemption u/s 10(22) of the Act has been laid by the Apex Court in [Aditanar Educational Institution Vs. Additional Commissioner of Income Tax](#), as follows :

"... 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...." (p. 318)

Thus, the question of eligibility of exemption under the said section has to be determined with reference to the objects of the assessed (society) and the

exemption cannot be denied merely because while working of the society some surplus results. Similarly, in the context of exemption u/s 10(22), the conditions as stipulated in either section 11 or 13 of the Act are irrelevant.

In the present case, as noticed above, while holding that the assessed is entitled to exemption u/s 10(22) of the Act, the Commissioner (Appeals) has recorded a categorical finding that the assessed has been running educational institutions for the past 25 years without any profit motive. Although it is not a relevant factor but we may note that when the loans in question were given in the earlier years, exemption u/s 10(22) was still not denied to the assessed in respect of the those assessment years. We are in agreement with both the appellate authorities that claim of depreciation in respect of certain assets of the assessed does not per se shows the business/profit motive of the assessed, disentitling it from exemption u/s 10(22) of the Act.

Having perused the order of the Tribunal carefully, we are not persuaded to agree with learned counsel for the revenue that the Tribunal has failed to record any reason for coming to the conclusion that the assessed was entitled to exemption u/s 10(22) of the Act. The Tribunal has endorsed the view of the Commissioner (Appeals) on the basis of the aforementioned circumstances noticed by the Commissioner (Appeals) in his order. We also find substance in the contention of learned counsel for the assessed that in the absence of any change in the objects and activities of the assessed, the assessing officer was not justified in taking a different view only in respect of the present assessment year when from assessment year 1970-71, exemption under the said provision was being allowed to the assessed consistently. In this behalf it would be appropriate to notice the following observations of the Apex Court in [M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax](#), :

"We are aware of the fact that, strictly speaking, res judicata does not apply to Income Tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year." (p. 329)

We feel that the afore-extracted observations squarely apply on facts in hand.

For the foregoing reasons, we do not find any merit in this appeal and accordingly decline to entertain the same. Dismissed.