

Reserved on : 03.03.2016
Delivered on : 11.03.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.03.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.34102 of 2015
and M.P.No.1 of 2015

B.S.Abdur Rahman Institute
of Science & Technology,
rep by its Member of the Board,
Khalid A.K.Buhari
S/o M.K.M.Abdul Khader
No.4, Moores Road,
Chennai - 600 006. ... Petitioner

Vs.

The Chief Commissioner of
Income Tax - 3 Chennai,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ... Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondent in No.CCIT-3/10(23C)/2015-16 dated 30.09.2015 and quash the same and direct the respondent to grant exemption sought for by the petitioner in terms of Sec.10(23C)(vi) of the Income Tax Act.

For Petitioner : Dr.Anita Sumanth

For Respondent : Mr.J.Narayanasamy,
Standing Counsel (IT)

ORDER

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records dated 30.09.2015 on the file of the respondent and to quash the same and to direct the respondent to grant exemption sought for by the petitioner in terms of Sec.10(23C)(vi) of the Income Tax Act.

2.According to the petitioner, it is a Society constituted in terms of the provisions of the Indian Societies Act, 1975. According to the petitioner, the objectives for which the Institute is established are:

- i.To provide for instruction and training in such branches of learning as it may deem fit.
- ii.To promote education of all types in general and technical education in particular, among the educationally, socially and economically backward communities of India in general, Muslim community in particular.
- iii.To provide for research and for the advancement and dissemination of knowledge.
- iv.To sponsor or establish institutes or bodies which satisfy the requirements of the University Grants Commission Act 1956 for being recognized as "Deemed University" and do all such acts as are necessary to secure the recognition of such institutes or bodies as deemed university u/s 3 of the UGC Act or the statutory amendments thereof.

3. According to the petitioner, the Institute was established for the purpose of dissemination of organized education and it has been engaged only in activity ever since inception. Further, the petitioner contended that it does not engage in other activity other than the purposes stated above. The petitioner has been granted Registration under Sections 12AA and 80G of the Income Tax Act vide approvals dated 18.12.2009 and claims exemption in terms of Section 11 of the Act in respect of the income earned from the charitable and educational activities carried on by it. Under Section 11 of the Income Tax Act, an exemption from income derived from activities of charitable nature has been provided. As per Section 2(15) of the Act "Charitable purpose" means "charitable purpose includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wild life) and preservation of monuments or places or objects of artistic or historic interest] and the advancement of any other object of general public utility". The petitioner contended that they were advised to seek and obtain exemption in terms of Section 10 (23C) (vi) of the Act that provides an exemption for an University or an educational institution solely for educational purposes and not for purposes of profit. The petitioner filed an application in Form-56D seeking approval for exemption under Section 10 (23C) (vi) of the Act for the assessment year 2014-15 on 30.09.2014. The said application was rejected by the order dated 30.09.2014 on the ground that the petitioner Society did not exist solely for educational purpose and in fact had multiple objectives and therefore, the Society does not qualify under Section 10 (23C) (vi) of the Act in question. According to the petitioner, the respondent came to the said conclusion on the basis of existence of the 4th objective in the original memorandum that has been deleted and it has never been acted upon. The show cause notice issued on

23.09.2015 to the petitioner calling upon certain clarification.

4. According to the petitioner, though the petitioner has been incorporated originally with 5 objectives, including an objective relating to the undertaking of various programmes for the development of the Society and though they form part of the original objectives, the object was never translated to action and no activity was carried out in this regard by the petitioner. According to the petitioner, the existence of the said objective was redundant and was never acted upon and the petitioner decided to amend the objectives by deleting the same. The petitioner contended that the original objects of the petitioner Society was not acted upon at any stage and was deleted on 02.06.2014 as a clarificatory measure. Further, according to the petitioner, the deletion relates back to the inception of the petitioner Society and has been erroneously stated to be prospective.

5. Dr. Anita Sumanth, learned counsel appearing for the petitioner, in support of her contentions, relied upon the judgment reported in (2008) 301 ITR 86 (SC) [American Hotel and Lodging Association Educational Institute Vs. Central Board of Direct Taxes and others] wherein in paragraph-12, the Hon'ble Supreme Court observed as follows:

"By its order dated October 12, 2004, the Central Board of Direct Taxes rejected the appellant's application holding that "there is a surplus repatriated outside India and, therefore, the appellant has not applied its income for the purpose of education in India."

In paragraph-31 of the judgment, the Hon'ble Supreme Court held as follows:

"Therefore, the twelfth proviso is the matter of detail. The most relevant proviso for deciding this appeal is the thirteenth proviso. Under that proviso, the circumstances are given under which the prescribed authority is empowered to withdraw the approval earlier granted. Under that proviso, if the prescribed authority is satisfied that the trust, fund, university or other educational institution, etc., has not applied its income in accordance with the third proviso or if it finds that such institution, trust or fund, etc., has not invested/deposited its funds in accordance with the third proviso or that the activities of such fund or institution or trust, etc., are not genuine or that its activities are not being carried out in accordance with the conditions subject to which approval is granted then the prescribed authority is empowered to withdraw the approval earlier

granted after complying with the procedure mentioned therein.

Having analysed that provisos to section 10 (23C) (vi) one finds that there is a difference between stipulation of conditions and compliance therewith. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardized form in terms of the first proviso. It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance with the requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/ requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval."

6. Countering the submissions made by the learned counsel for the petitioner, Mr. J. Narayanasamy, learned Standing Counsel appearing for the respondent submitted that in view of the 4th objective mentioned in the Memorandum and Articles of Association, the claim made for exemption made by the petitioner cannot be granted. That apart, the learned counsel submitted that since the amendment of the said clause was made from 02.06.2014, it shall only apply for the assessment year 2015-16 and cannot be considered for the assessment year 2014-15.

7. In support of his contentions, the learned standing counsel relied upon an unreported order of this Court made in W.P.No.28289 of 2010 dated 13.12.2010 wherein this Court held as follows:

"The petitioner institution is governed by a Trust Deed executed on 13.12.2006. The main object of the trust deed is to establish a deemed university and for the purpose of catering higher technical, engineering, medical, dental, paramedical, business education, applied science, arts, science and job oriented courses in the industrially backward Taluks and Districts of Tamil Nadu and to create necessary and adequate technical and engineering skill among the youth. It is seen that there are incidental objects and clause 14 and 15 of the Trust Deed read as under:

"14. To give, provide and/or render help and assistance to and/or implement any scheme for providing livelihood and upliftment of the

15.To provide social services and of all kinds to uplift socially and economically backward and to create awareness among people to uphold the Constitution of India.”

2.It is based on the said incidental objects, the impugned order came to be passed by the respondent in the application filed by the petitioner in Form No.56 D on 20.08.2009 for the purpose of exemption under Section 10(23C)(vi) of the Income Tax Act for the assessment year 2010-2011, stating that by virtue of the said two clauses such exemptions cannot be granted. The said decision is taken on the basis that the incidental object is being used for any other purpose other than educational purpose and that cannot be said to be the main object of the institution. It was in those circumstances, the respondent has decided that the petitioner institution was not eligible for grant of approval under Section 10(23C)(vi) of the Income Tax Act.”

8.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also taking into consideration the judgments relied upon by the learned counsel on either side, it could be seen that in Clause-4 of the objective mentioned in the Memorandum and Articles of Association, it has been stated that the objective is to sponsor or establish institutes or bodies which satisfy the requirements of the University Grants Commission Act 1956 for being recognized as “Deemed University” and do all such acts as are necessary to secure the recognition of such institutes or bodies as deemed university u/s 3 of the UGC Act or the statutory amendments thereof. This Clause was deleted by the petitioner on and from 02.06.2014 in their Memorandum and Articles of Association. However, the petitioner contended that though the deletion was made on 02.06.2014, the petitioner was engaged solely in the activity of education alone and therefore, they are entitled for exemption under Section 10(23C)(vi) of the Income Tax. When there is a specific Clause mentioned in the Memorandum and Articles of Association, the respondent can only go by the documentary proof available before him and he cannot go beyond that and give a finding contrary to the recitals found in the document.

9.It is not in dispute that Clause-4 of the Memorandum and Articles of Association was deleted on 02.06.2014 and the effect of deletion of the said Clause will come into force only prospectively and it cannot be retrospective. As per Section 2(15) of the Act “Charitable purpose” means “charitable purpose includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wild life) and preservation of monuments or places or objects of artistic or historic

interest] and the advancement of any other object of general public utility". Clause-4 of the objectives shall not come within the meaning of charitable purpose as defined under Section 2(15) of the Act. Therefore, the finding of the respondent that the 4th objective cannot be considered as being related to promotion of education as contained in Section 10 (23C) (vi) of the Act is just and proper.

10. It is pertinent to extract Section 10(23C) (vi) of the Income Tax Act, which reads as follows:

"Section 10(23C)

(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;

provided also that the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)] -

(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years."

11. As rightly observed by the respondent, it relates to development of Society as narrated in the said objective and hence, for the assessment year 2014-15, the petitioner had multiple objectives and therefore, did not exist solely for educational purpose. As already stated, the amendment made in the Memorandum and Articles of Association can only be prospective and in that case, it shall apply only for the assessment year 2015-16 and cannot be considered for the assessment year 2014-15. Considering all these aspects, the respondent had rightly rejected the Form-56 D filed by the petitioner finding that the assessee does not qualify under Section 10(23C) (vi) of the Act for the assessment year 2014-15. Since the facts and circumstances of the case relied upon by the learned counsel for the petitioner differs, the same is not applicable to the present case.

12.In these circumstances, I do not find any reason to interfere with the order passed by the respondent. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

va

To

The Chief Commissioner of
Income Tax - 3 Chennai,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.J. Narayanaswamy, Advocate, S.R.No.16002
+1cc to Mr.M/s. Dr.Anita Sumanth, Advocate, S.R.No.15939

SVI (CO)
EU(23/03/2016)

W.P.No.34102 of 2015
and M.P.No.1 of 2015

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