

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction
[Income Tax]
ORIGINAL SIDE

ITP 120 of 1996

C.I.T., CENTRAL
Versus
APEEJAY MEDICAL LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE INDRAJIT CHATTERJEE

Date : 18th February, 2016.

Mr. M. P. Agarwal, Adv.
... for the Appellant/Revenue
Mr. S. K. Kapoor, Sr. Adv. with
Mr. J. P. Khaitan, Sr. Adv.
Mr. Dilip Dhar, Adv.
Mr. Ravi Kapoor, Adv.
Ms. Anupa Banerjee, Adv.
Ms. Swati Agarwal, Adv. and
Ms. Natasha Roy, Adv.

The Court : Both for the assessment years 1986-87 and 1987-88, the Assessing Officer held that the assessee was not entitled to the benefit under Section 10(22A) of the Income Tax Act, 1961, hereinafter referred to as the "Act". The CIT(A) concurred with the views of the Assessing Officer. In an appeal carried by the assessee to the Tribunal the Tribunal was of the opinion that the assessee deserved the benefit under Section 10(22A). The revenue applied for reference, which was refused by the learned Tribunal. The revenue, in the circumstances, came up before this Court under Section 256(2) of the Act. The application was taken up for hearing on 16th July, 1997 when a Division Bench of this Court issued Rule calling upon the assessee to show cause why the Income Tax Appellate Tribunal "D" Bench, Kolkata should not be directed

to draw up a statement of case and to refer the case to this Court for determination of the question of law indicated therein as follows:-

- “1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in directing the Assessing Officer to grant the assessee exemption u/s.10(22A) of the Income Tax Act, 1961 ?
- 2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there can be a private limited company with an object of philanthropic & charitable purposes as envisaged in section 10(22A) of the Income Tax Act, 1961?”

The Rule was made absolute on 16th March, 2000. Therefore, the questions indicated above have to be answered.

Mr. Agarwal, learned advocate for the revenue, contended that the Tribunal did not take into consideration the fact that the medical facility allegedly advanced by the assessee were aimed at helping the employees of the sister concerns. There was no philanthropic activity nor did assessee exist solely for philanthropic purposes. Therefore, the benefit under Section 10(22A) could not have been advanced to them.

Mr. Kapoor, learned senior advocate appearing for the assessee, submitted that the Tribunal has allowed the benefit of Section 10(22A) to the assessee for the following amongst other reasons:-

“The main objects of the assessee which are clearly brought out in Memorandum of Association are all solely for philanthropic purposes and not for profit. The assessee has also not violated its objects. The exemption also cannot be denied to the assessee on the basis of incidental or ancillary objects of the institution as they are not against the main object and rather supports it. The certificate from the Assistant Labour Commissioner-cum-Deputy Chief Inspector of Plantation, Tinsukia and Medical Inspector of Plantation, Tinsukia, which is in page-30 of the Paper Book also clearly states that the assessee is maintaining and conducting free medical and hospital facilities for both the tea garden labourers and their families as well as for the inhabitants of surrounding areas since 1985.

Therefore, considering the totality of facts and circumstances, we hold that authorities were not justified in denying exemption to the assessee u/s.10(22A) of the I.T. Act for both the years, and accordingly we would direct them to grant exemption."

Mr. Kapoor contended that the finding on a question of fact, recorded by the learned Tribunal, is final and this Court in a reference cannot disturb such finding nor can come to any independent finding of fact.

It is true that the finding of fact arrived at by the learned Tribunal is final unless the same is challenged on the ground that there was no material or no sufficient material to arrive at such a finding. Admittedly no such challenge is there, prima facie material is also there in the impugned judgement quoted above.

For the aforesaid reasons we refuse to answer the question No.1.

In order to give answer to the question no.2, all that we have to do is to notice Section 10(22A) of the Act, which provides as follows:-

"(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit;"

Mr. Agarwal, learned advocate for the revenue, submitted that the institution contemplated under Section 10(22A), quoted above, has to be a company under Section 25 of the Companies Act. He added that a private company was not contemplated by section 10(22A).

This submission, according to us, is without any merit as would appear from sub-section (1) of section 25 of the Companies Act, 1956, which provides as follows:

"25. Power to dispense with "Limited" in name of charitable or other company.- (1) Where it is proved to the satisfaction of the Central Government that an association-

- (a) *is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and*
- (b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

the Central Government may by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word “Limited” or the words “Private Limited”.”

It would appear that even a private limited company can get the benefit of section 25 of the Companies Act, 1956. The benefit is to have the word “Limited” or the words “Private Limited” dropped. On the basis of this sub-section, one cannot say that a private limited company cannot come within the purview of the word “Institution”, used in section 10(22A) of the Act. When the legislature has not restricted the meaning of the word “Institution”, there is no reason why any restriction should be put to the word by the Court. No further submission was advanced by Mr. Agarwal. We find no substance in the submission, which, he already advanced and, therefore, the question no.2 is answered in the affirmative.

The reference is thus disposed of.

(GIRISH CHANDRA GUPTA, J.)

(INDRAJIT CHATTERJEE, J.)

