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Court No. - 4

Case :- INCOME TAX APPEAL No. - 150 of 2015

Appellant :- Commissioner Of Income Tax (Exemption) Aayakar Bhawan Lko.
Respondent :- M/S. Chironji Lal Virendra Pal Saraswati Shiksha Parishad
Counsel for Appellant :- Alok Mathur

Hon'ble Amreshwar Pratap Sahi,J.
Hon'ble Attau Rahman Masoodi,J.

This appeal filed on behalf of the department questions the exemption claimed by the respondent society in respect of receipts for the Assessment Year 2010-2011 and 2011-2012 from the institution established and run by it.

The society set up a Junior High School for imparting education from Class 6 to 8 that was continuing in a premise. The society was registered on 7th April, 2010 under the Societies Registration Act 1860. For the Financial Year 2009-2010 i.e. Assessment Year 2010-2011, the respondent assessee indicated receipt of a sum of Rs. 1,0,2,22,229/-. It claimed deduction and exemption as per the provisions of the Income Tax Act 1961 on the ground that it is existing solely for educational purposes. Admittedly, the society was not registered under Section 12AA nor did have any approval of the prescribed authority for exemption under Section 10 (23-C)(vi) of the Income Tax Act, 1961. In this background a show cause notice was issued to the society on 14.12.2012 calling upon it as to why the said income be not assessed as purely business income, and consequently the exemptions be disallowed as sought by it. The society responded by submitting that they had already applied before the competent authority for approval in relation to exemption under Section 10(23-C)(vi) of the 1961 Act.

During hearing before the Assessing Officer it was found that since the application for exemption had not been moved prior to 30th September, of the relevant assessment year, the request for exemption stood rejected. It was also recorded by the Officer that during the course of hearing the assessee came up with a plea that the society is running two separate schools, namely a Junior High School and a separate senior school from Class 9 to 12, and therefore, on account of existence of two separate schools, assessee claimed that the breakup of total receipts for both the schools separately were less than Rs. One Crore, and hence the total receipts exceeding Rs. One Crore, was not a fact on the basis whereof the assessee could be assessed for having business income.

The Income Tax Inspector was deputed for making a field enquiry who reported that the school runs in the name of an Intermediate College in the same building in a single premise with common teaching and non-teaching staff and students wearing the same uniform without there being any distinct identity of two separate institutions.

The assessing officer, therefore, disallowed the claim of the status as urged by the respondent and a demand notice was accordingly issued.

The assessee preferred an appeal and the learned Commissioner of Income Tax Appeals held that aggregate annual income means total annual receipt of each separate education institution and not the aggregate of the annual receipts of all the educational institutions run by the respondent society. It accordingly allowed the appeal relying on the judgment in the case of ***CIT vs. Children Education Society*** reported in ***2014 (264) CTR (Karnataka) 389***.

The department approached the Tribunal against the said appellate order and the same has been dismissed in relation to both the assessment years on the same ground. This is how the department has come up in appeal before us.

Sri Alok Mathur, learned counsel for the appellant contends that the findings recorded by the assessing officer are justified on facts and its reversal by the Commissioner Income Tax in an appeal was an erroneous approach. The confirmation of the same by the Tribunal is equally erroneous, inasmuch as, neither the learned Commissioner nor the learned Tribunal have appreciated the fact that the assessee is the society that was claiming to have set up both the institutions that were in fact one and the same without separate existence. The aggregate income derived from running of the institution in the same premises by the assessee society was a composite aggregate income that could not have been segregated on the premise on two separate sections running in the same institution. He therefore submits that a substantial question of law clearly arises as the judgment of the Karnataka High Court appears to have been wrongly applied where there were separate institutions spread far away even though run by the same society.

It is therefore contended that the appeal deserves to be admitted for reversal of the impugned orders.

We have considered the aforesaid submissions and we find that much would depend upon the status of the institutions and their legal identities for the purpose of treating their incomes separately. It is evident that the society is one and the same. The society was running the Junior High School and continues to do so. The distinction between the Junior High School section and the recognized Intermediate College has to be considered on the basis of recognitions of the institutions. A Junior High

School is governed by the provisions of the U.P. Basic Education Act, 1972 whereas an Intermediate College duly recognized is governed by the provisions of the U.P. Intermediate Education Act and the regulations framed thereunder. From the impugned judgment it is evident that approval to commence the Intermediate College was granted on 14th July, 2012. Once an Intermediate College comes into existence then the Institution would not be governed by the Basic Education Act which was only upto the Junior High School level. A distinct legal entity, therefore, is created with the recognition of an Intermediate College. The question is as to whether the receipts claimed by the society upto the level of the Junior High School Classes, i.e. Class 8, can be treated to be a separate segregated receipt and would not form part of the aggregate income including that the Intermediate College so as to construe it as an aggregate receipt in the hands of the respondent assessee society.

This will also have to be further examined that a society established under the Societies Registration Act is a distinct legal entity as it is registered under the Societies Registration Act, 1860, where provisions exist for the annual submission of returns to be filed before the Registrar Firms, Societies and Chits including the list of office-bearers and the income of receipts of the society.

In the instant case, there is nothing on record to indicate that the assessing officer proceeded to examine the status of the society and its annual receipts or income as a legal entity in itself. The assessing officer on the basis of the return filed has treated the income received from the two sections of the institution to be a receipt in the hands of the society without examining the legal status of either the Junior High School or the Intermediate College which stand recognized under different Acts.

There is yet another issue which the Tribunal and the Commissioner Income Tax have not examined, namely as to whether during the assessment years in question, there was any separate Inter College, inasmuch as, it was for the first time that approval was granted to run an Inter College on 14th July, 2012. While reversing the order of the assessing officer, this factual aspect does not appear to have been dealt with at all.

Apart from this, Sri Mathur has further invited the attention of the Court to the decision in the case of ***Dr. (Smt.) Sushila Gupta Vs. Joint Director of Education, Kanpur Region, Kanpur and others, 2006 (2) AWC 1561*** and the decision in the case of ***Brijesh Tripathi Vs. State of U.P. and others, 2013 (11) ADJ 425*** to contend that once an institution is upgraded to an Intermediate College, then the Junior High School loses its identity and it merges with the Intermediate College. This aspect of the law relating to educational institutions including the one presently involved also does not appear to have been examined either by the assessing officer or even by the appellate authorities while reversing the order of the assessing officer.

All the aforesaid issues therefore have to be looked into alongwith the definition of the word Assessee [Section 2(7)], the definition of the word Person [Section 2(31)], the definition of the word Income and Section 10 of the Income Tax as contained in Section 2(24) of the Income Tax Act, 1961. It is in this background that the claim of exemption as sought under Section 10(23-C)(iiiad) will also have to be seen.

Consequently, for all the reasons given hereinabove, we are of the considered opinion that the substantial questions of law as raised do arise for consideration on the facts and the legal issues raised in the present case.

Admit on the following substantial questions of law:-

1. Whether the ITAT is justified in law under the facts and circumstances of the case, as the phrase 'Separate institute' for the purpose of availing exemption u/s 10 is nowhere defined in the Act. The assessee cited judgement in case of CIT Vs. Children Education Society (2014) 264 CTR (Kar.) where the assessee society was running as much as 22 educational institutes separately which were miles away from the fact of this case where assessee is running a single school on single location, in single and distinct building with single playground and other facilities claiming to be two Separate educational institute.

2. Whether the ITAT is justified in law and on facts without appreciating the fact that, as the Assessing Officer in his order recorded that 'taking recognition of Junior and Senior Section in normal administrative process it never connotes that there are two schools.' Further at page 3 of the Ld. CIT (Appeals)'s order, the assessee, in support of his claim of being two schools quoted the use of prefix 'COMBINED' on books of account of Society not Junior/Senior School in different books of accounts of the assessee which clearly indicates that these are merely two sections of a single School which were maintained for administrative ease and better monitoring.

3. Whether the ITAT is justified in law and on facts without appreciating the fact that as the assessee for the first time moved request for approval u/s 10(23C)(vi) in the Assessment Year 2013-14 whereas for the year under consideration the

Assessee was neither registered u/s 12A nor got approval u/s 10(23C)(vi) of the I.T. Act, in spite of the fact that in A.Y. 2009-10, 2010-11 and 2011-12 total receipt of Society exceeded Rs. One Crore. The A.O. in his order noted that all the arguments made by the assessee seems an effort to cover up its carelessness and inaction in following statutory provisions, and rightly denied the exemptions and treated the surplus of income over Expenditure as business income. Findings of the AO were based on material available on records and not on presumption. The two school theory of the assessee is bogus claim as there never existed two schools and merely only two sections which is also evident from the copy of balance sheet and other Annexures thereof which clearly indicated that there existed only two separate sections.

4. Whether Hon'ble ITAT is justified in law and on facts that he has wrongly accepted the breakup of receipt of Junior High School and Senior Secondary School in the impression that it was done by A.O., contrary to the fact that it was mere submission by the assessee Society. Further plain reading of Rule 2BC(1) which is as under:-

"2BC(1) for the purpose of sub-clause (iiiad) of clause (23C) of Section 10, the amount of annual receipts on or after the 1st day 1998, of any university or other educational institution, existing solely for educational purposes and not for purposes of profit, shall be one crore rupees."

5. Whether the ITAT is justified in law and on facts by allowing segregation of income to the assessee

society however it is evident that the rule clearly guides for annual receipts and about aggregate receipts which includes income from all the sources, hence the AO was justified in taxing the surplus of the income over expenditure.

Issue notice to the opposite party, returnable at an early date. List thereafter.

Order Date :- 5.1.2016

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