

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 6086 of 2015**

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MUDRA FOUNDATION FOR COMMUNICATIONS RESEARCH AND
EDUCATION

Versus

CHIEF COMMISSIONER OF INCOME TAX – AHMEDABAD-IV

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Appearance:

MR B S SOPARKAR, ADVOCATE for the Petitioner(s) No. 1

MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE A.J.DESAI**
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 28-29/07/2015

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE A.J.DESAI)

Rule. Ms Mauna Bhatt, learned advocate for the respondent waives service of notice of Rule on behalf of the respondent. With the consent of the parties, the petition has been taken up for final hearing today itself.

2 By way of the present writ petition under Articles 14, 19(1)(g) and 226 of the Constitution of India the petitioner has challenged the order dated 29th September 2014 passed by the Respondent-Chief Commissioner of Income-tax, Ahmedabad-IV by which the application submitted by the petitioner to issue exemption certificate in its favour under Section 10(23C)(vi) of the Income-tax Act, 1961 ('the Act', for short) has been refused. The respondent authority has filed its affidavit-in-reply opposing the grant of any relief as prayed for by the petitioner.

3 The brief facts emerging on the record are that the petitioner is a society registered under the Societies Registration Act, 1860 as well as under the provisions of the Bombay Public Trusts Act, 1950. It is the case of the petitioner that the institution is engaged in imparting higher and specialised education. It is specialised in imparting education in the field of communication including advertising and its related subjects. The petitioner has also been granted the registration under Section 12A of the Act.

The Director of Income-tax (Exemption) had issued a notice under Section 12AA(3) of the Act and called upon the petitioner to explain as to why its registration under Section 12A of the Act should not be withdrawn. The said notice came to be challenged by the petitioner in this court by filing a writ petition, which was withdrawn at a later stage in view of the fact that only show-cause notice was under challenge. However, the procedure initiated by the Director of Income-tax (Exemption) under Section 12AA(3) of the Act were dropped by an order dated 3rd March 2014 and accordingly the registration granted in favour of the petitioner under Section 12A of the Act remained intact.

4 The petitioner submitted an application for getting an exemption certificate under Section 10(23C)(vi) of the Act for the Assessment Year 2013-14 and onwards on 30th September 2013. The petitioner was called upon to make submissions. By two letters dated 28th February 2014 and 13th August 2014 detailed submissions were made before the respondent-commissioner with whom the application was pending for adjudication.

By the impugned order dated 29th September 2014, the respondent-commissioner refused to issue the certificate under Section 10(23C)(vi) of the Act on various grounds. Hence, this petition.

5 Mr Bandish Soparkar, learned advocate for the petitioner has vehemently submitted that the respondent Commissioner has grossly erred in rejecting the application on the ground that –

- (i) The applicant does not have education as the sole purpose,
- (ii) The applicant is engaged in conducting coaching/training courses for and on behalf of industry, trade and commercial organisations;
- (iii) The applicant is engaged in various social activities of general public and public utility; and
- (iv) the applicant is not conducting educational courses as charitable activity, but for the purpose of profit.

6 By taking the Court through the objects enumerated in the Memorandum of Association of the petitioner, Mr Soparkar would submit that the petitioner is established solely with the purpose of providing training in communication including advertisement and related subjects for the persons from industry, institutions as well as individuals so as to equip them thoroughly to practice the art and profession of communication in which they have been trained. The object of the institution is also to prepare all talented, mature young persons for career leading to communication with responsibility for the public at large. By

taking us through the objects of the petitioner institution he would submit that the institution has always fixed and demanded such fees and other charges which shall not exceed the cost of training, hostel expenses, etc. He would submit that one of the objects of the petitioner institution is to educate and train the students to meet the needs of Indian industry and commerce and to provide up-to-date information about the market condition through service, research, report, etc. and publish the same through magazine and other printing material.

7 By relying upon the above referred objects, Mr Soparkar would submit that his case would be covered under Section 2(13) i.e. 'charitable purpose' since it provides education in a specific field. He would further submit that the petitioner educational institution is existing solely for the educational purposes and not for the purpose of profit though the petitioner institution might have surplus funds after the expenditure for the purpose of imparting education in better and different ways. He would, therefore, submit that the conclusions arrived at by the respondent that the applicant does not have the education as the sole purpose, is on wrong premise and therefore the same is required to be discarded. As regards the conclusion that the applicant is engaged in conducting coaching/training courses for and on behalf of industry, trade and commercial organisations is concerned, he would submit that the institution is established to provide education to those persons who might be working with some company or private organisations so that they can be educated in correct direction and for that fees are leviable according to the course they intend to carry out with the

petitioner institution. He would further submit that the petitioner cannot be said to have been engaged in activity of rendering service in relation to trade, commerce or business. The institution is offering different types of courses and the students who join the institution have to attend the classes. Renowned Professors from India as well as foreign countries, deliver the lectures and provide material which may help them in educating themselves in their own field. He, therefore, would submit that these observations are required to be brushed aside. He would submit that to organise various training programmes for the students, which might involve or participation of marginalised communities and deprive the society is not correct finding and the finding to the effect that this object can be treated as a general public utility, but not education field is erroneous. Mr Soparkar, while attacking the last observation made by the respondent authority that the applicant is not conducting the educational courses as charitable activity, but for the purpose of profit, would submit that the impugned order itself does not prima facie establish that the income received by the petitioner trust has been used for any other purpose than the objects mentioned in the Memorandum of Association. He would submit that the respondent was aware about the objects of the petitioner institution when the authority has issued the notice under Section 12A of the Act and the authority had never raised any objection in the past with regard to profit and loss account and the expending of the petitioner institution.

8 He would further submit that if the institution has some surplus at the end of financial year and has earned some profit, that itself would not disentitle the petitioner from

getting the certificate if the overall object of the institution is to impart education. By relying upon a decision in the case of **Queen's Educational Society v. Commissioner of Income-tax, [2015] 55 taxmann.com 255 (SC)** delivered by the Apex Court he would submit that by considering several decisions of different High Courts the Honourable Apex Court has dealt with the provisions of Section 10(23C) (vi) of the Act and has observed that if it is found that an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit. He would submit that it is not the case of the respondent that the surplus of the institution has been used for any other purpose than the objects of the petitioner institution. He would further submit that the authority has erred in holding that the fees charged by the institution are not for the general public, but for the people who are either affluent and who are sponsored by the trade, commerce, etc. and therefore the findings recorded only on this ground, that the petitioner is created for earning profit is on a wrong footing and therefore these observations are also contrary to the provisions of law as well as ratio laid down by the Honourable Supreme Court as well as different High Courts. He would further submit that the objects referred to in clause 3 of the Memorandum of Association are interwoven and are meant for providing education only.

9 Mr Soparkar has also relied upon a decision in the case of **Director of Income-tax (Exemption) v. Ahmedabad Management Association (2014) 37 Taxman.com 162**

(Guj.) and submitted that the Division Bench has held that when the object of the institution is to provide education, its claim for getting exemption under Section 10(23C)(vi) cannot be denied only on the ground that the institution is educating the students in specialised filed i.e. communication. He, therefore, submits that the petition may be allowed and the order dated 29th September 2014 passed by the Respondent-Chief Commissioner of Income-tax, Ahmedabad-IV by which the application submitted by the petitioner to issue exemption certificate in its favour under Section 10(23C)(vi) of the Act has been refused may be set aside.

10 On the other hand, Mr M.R.Bhatt, learned Senior Advocate assisted by Mrs Mauna Bhatt, learned counsel for the respondent has vehemently opposed the petition and would submit that the respondent authority has dealt with the case of the petitioner institution in detail and has rightly come to all the conclusions which are reflected in the operative portion of the order. He would submit that the petitioner institution is not existing solely for educational purposes since the some of the objects of the petitioner institution would establish that it is not established solely for educational purpose.

11 As far as conclusions arrived at by the respondent authority that the applicant does not have education as the sole purpose of its existence, he would submit that the case of the petitioner would fall under the first proviso to Section 2(15) of the Act, which defines the charitable purpose. He would submit that the petitioner-institution is involved in such activities which would establish that it is rendering its

services in relation to trade, commerce and business and for which the petitioner is collecting remuneration in the name of fees from those persons who attend the seminars organised by the institution for the betterment of the trade, commerce or business. He would submit that the sole object of the petitioner-institution is not to impart education only and therefore the authority has rightly held against the petitioner. By taking us through the objects and more particularly object No.3(i), he would submit that the institution is carrying on its activities by providing service for the betterment of different types of industries.

12 Mr Bhatt would submit that the petitioner is entitled for the certificate under Section 10(23C)(vi) of the Act only if the institution exists solely for educational purpose, which is not the case of the petitioner. He would further submit that even if it is believed that most of the activities of the petitioner institution are relating to education, but if it is found that one of the objects of the present petitioner is not imparting education, then the petitioner would not be entitled for the certificate as claimed by it. He would submit that the authority had rightly observed that the fee collected by the petitioner institution is exorbitant, which would not benefit the public at large and only affluent individuals would be able to train themselves through the petitioner institution. Only the companies which can afford such high fee can send their employees for special training so that they would be benefited and it would lead to only conclusion that the petitioner institution is established to earn the profit. He, therefore, would submit that the petition be dismissed.

13 We have heard learned counsel appearing for the respective parties.

14 It is an admitted position that a certificate under Section 12A of the Act has already been issued in favour of the petitioner and the same has continued till date. Therefore, it is established that the petitioner-institution is a charitable trust as far as applicability of the Income Tax Act is concerned.

15 As far as the object of the institution which are referred in the Memorandum of Association are concerned, the same are reproduced hereunder for ready reference:

“3. The objects for which the Society is established are:

- (i) to establish and to carry on the administration and management of the Mudra Foundation for Communications Research and Education, Ahmedabad. The functions of the Society shall be:
 - (a) to provide for training in Communication including Advertising and related subjects for persons from industry, institutions and bodies and associations connected with industry and commerce and individuals in such a way as to equip them thoroughly to practice the art and profession of Communication in which they have been trained or, in appropriate cases, to instruct others in the practice of Communication;
 - (b) to select and prepare outstanding and talented mature young persons for careers leading to Communication including Advertising responsibility.
 - (c) to award diplomas, certificates and other distinctions to candidates trained, and to

prescribe standards of proficiency before the award of such diplomas, certificates and other distinctions;

- (d) to institute and award fellowships, scholarships, prizes and medals in accordance with the Rules and By-laws;
- (e) to confer honorary awards and other distinctions;
- (f) to fix and demand such fees and other charges as may be laid down in the By-laws made under the Rules of Society; such fees shall not exceed the cost of training, hostel expenses etc., the Society shall not be precluded from subsidising such costs.
- (g) to establish, maintain and manage halls and hostels for the residence of students;
- (h) to undertake research, studies, surveys, discussions, seminars, conferences, workshops, shows and exhibitions relating to the use of Communications and allied techniques and methods leading to improved marketing and productivity.
- (i) to meet the needs of Indian Industry and Commerce in respect of upto date information about market conditions for introducing new products, promotional sales of existing products etc., through surveys, research reports and publication of periodicals, magazines and other printing material.
- (j) to determine the rates of remuneration and conditions of service for professional, technical, administrative and other posts under the Society and to make appointments there to.
- (k) to cooperate with educational, research or other institutions in any part of the world having objects wholly or partly similar to those of the Society by exchange of teachers, scholars and generally in such manner as may be conducive

to their common objects: and

- (l) to create patronship, affiliation and other classes of professional or honorary or technical membership of office as the Society may consider necessary;
- (ii) to establish and administer or assist in establishing and administering schools, colleges, training centers and the like which would help the objects of the Society.
- (iii) to institute chairs, subscribe or give donations to and financially or otherwise aid to any other Society, Institution whose objects and activities are similar to the objects of the Society; or give charity/relief to the needy particularly to the organizations of women and children.
- (iv) to raise funds and accept donations (in cash or kind) subscriptions, grants of money, securities, property of any kind for the activities of the Mudra Foundation and accept management of any endowment trust fund or donation not inconsistent with the objectives of the Mudra Foundation and treat any donations earmarked and accepted for any specific purposes falling within the objectives mentioned in these precincts shall be used for such specific purpose only.
- (v) to acquire by gift, purchase, exchange, lease or hire or otherwise any lands, buildings, easements and any other property movable and/or immovable and for any estate or interest for furtherance of ail or any of the objectives of the Society.
- (vi) to sell, manage, exchange, transfer, mortgage, pledge, hypothecate gift, lease, dispose off or otherwise deal with any property, whatsoever belonging to the Society for the best interest of the Society.
- (vii) to commence, defend, appear, contest, sue, continue, compromise, submit to arbitration,

submit to decree or judgment, abandon civil, criminal, administrative, revenue, municipal arbitration conciliation or other proceedings or inquiry for the benefit or furtherance or in conjunction with the objects of the Society or any of them.

- (viii) to build, erect, construct, alter or add to extend, buildings and/or structures which are necessary or requisite for all or any of the purposes and objects of the Society and to equip them as may be necessary and to manage and administer the same.
- (ix) To maintain and repair and keep maintained and in repair the buildings and structures for the time being belonging to the Society and whenever so required to replace the furniture and fittings, books equipment and other movable property therein and to reconstruct and/or rebuild the said buildings and structures or such part or parts of them as required for reconstruction.
- (x) To establish a depreciation fund to meet the expenses of a capital nature incurred on the maintenance and repair of the buildings and structures for the time being belonging to the Society and/or on the replacement of furniture & fittings, books, equipment and other movable property and/or reconstructing and/or rebuilding such buildings and structures or any of them of any part thereof and to pay into such fund annually or at such longer period, as the Governing Council of the Society think fit.
- (xi) To take over, purchase, acquire, hold securities of the Government of India or of any State Government of Public Body or Post Office or National Savings Certificates or stocks, shares and securities, to which the Society is legally entitled to subscribe and hold.
- (xii) To take, receive, hold, expend, administer and use any gift whether of monies or other property movable or any bequests of Foundation, whether

subjects to any special trust or not, for the objects of the Society or any of them and to accept the office of and act as trustees, managers and administrators whether solely or jointly, with another or others, for or in respect of, any gift or any other property whether subject to any trust or not and notwithstanding that the carrying out of such trusts, management and administration would involve the exercise by the Society of power not specifically mentioned in these presents.

- (xiii) To raise funds as and when necessary by means of borrowing from the banks, Government or any other approved agency for the objects of the Society in conformity with the applicable laws.
- (xiv) To receive grants-in-aid or any other form of financial and material assistance from the Central and State Governments or other Government agencies for due performance of the objects of the Society.
- (xv) To made rules and By-laws for the conduct of the affairs of the Society and to add, to amend, vary or rescind them from time to time:
- (xvi) To monies received by the Society by way of grants, gifts, donations, loans, benefactions, bequests or transfers:
 - (a) all monies received by the Society by way of grants, gifts, donations, loans, benefactions, bequests or transfers:
 - (b) all fees and other charges received by the Society:
 - (c) all monies provided by the Central and the State Government: and
 - (d) all monies received by the Society in any other manner or from any other sources;
- (xvii) to deposit all monies credited to the Fund in such Banks or to invest them in such manner as

the Society may decide in conformity with the applicable laws.

Any surplus funds out of the funds received u/s 35(1)(iii) of the Income Tax Act, 1961, not needed for immediate research work will be invested by the organization in accordance with the modes specified in the Section 11(2), 11(3) and 11(5) of the Income Tax Act, 1961 as amended from time to time.

- (xix) To prepare and maintain accounts and other relevant records and to prepare an annual statement of accounts including the balance sheet of the Society in such forms as may be prescribed by the Societies Registration Act of 1860;
- (xx) To do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Society;
- (xxi) To constitute such Committees as it may deem fit for the disposal of any business of the Society or for tendering advice in any matter pertaining to the Society;
- (xxii) To set up separate sub-systems of the Society as independent activity centers, which have their own separate Managing Committees and also maintain their own activity schedules and accounts, on the understanding that the activities of these sub-systems are within the broad frame work of objectives of the Society.

If any of the sub-systems is likely to generate funds, separate books of accounts will be maintained for such fund generating activities.

- (xxiii) to delegate any of its powers to the Management Committee of the Sub-system or any of the committee or Sub-Committees constituted by it."

16 If the objects mentioned in the memorandum of association as mentioned in paragraph 3(i) and more particularly (a), (b) and (c) are perused, it appears that the institution is awarding diplomas, certificates, etc. after providing training in communication, advertising and related subjects to equip them thoroughly to practice the art and profession of Communication in which they have been trained and by giving special training they do prepare the outstanding and talented mature young persons for careers leading to Communication including advertising with teaching them their responsibilities towards the public at large. Clause (f) makes it clear that the fee collected shall not exceed the cost of training, hostel expenses etc., and the petitioner society shall not be precluded from subsidising such costs. As far as object 3(i) which has been relied upon by Mr Bhatt, learned Senior Counsel, we are of the opinion that by providing training to the individuals as well as those persons who have been sent by the companies to meet the needs of the Indian industry and Commerce and introducing them with new products and informing them about market conditions, etc. would not establish that the petitioner is carrying on such activity which would treat the same as service provided in relation to any trade, commerce and industry. Education does not mean teaching the students only, in the manner and method, the regular schools or colleges adopt to teach. In the progressive world, it is expected from certain institutions that they educate, teach and train persons so that those persons can compete similar experts worldwide. Therefore, we are not in agreement with the submissions made by Mr Bhatt, learned Senior Counsel that the sole object of the institution is not to impart education. By providing latest information and

thereafter training to those persons who are already in the field of advertising communication, etc. and in such process if certain persons become super-specialists in particular field and for which the institution is charging fee, we are of the opinion that the case would not fall under proviso to Section 2(15) as submitted by Mr Bhatt, learned Senior Counsel appearing for the respondent.

17 In case of Queen's Educational Society v. Commissioner of Income-tax, [2015] 55 taxmann.com 255 (SC) the Honourable Supreme Court has dealt with the similar provisions and more particularly provision of Section 10(23C) (vi), etc. With regard to the case of the respondent authority that the surplus funds of the institution have ever been used for other purpose than the purpose of promoting educational activities including research, etc. by relying upon the case of Aditanar Educational Institution v. Additional Commissioner of Income Tax, (1997) 224 ITR 310 the Honourable Supreme Court in paragraph 9 has held that the overall future of the matter is to be examined while considering the object of the institution i.e. whether the same is established to make profit or not. In paragraph 10 of the aforesaid judgment the Honourable Supreme Court has, by relying upon the case of Americian Hotel & Lodging Assn. Educational Institute v. CBDT, [2008] 301 ITR 86 held that if the institution has surplus at the end of the year, the same would incidental form the activities carried on by the institution and if it is established before the authority that the institution is not established solely for the educational purpose. After considering several decision, certain criteria have been laid down in paragraph 11 of the judgment, which reads as under:

“11. Thus, the law common to Section 10(23C) (iiiad) and (vi) may be summed up as follows:

- (1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.
- (2) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive.
- (3) A distinction must be drawn between the making of a surplus and an institution being carried on “for profit”. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.
- (4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.
- (5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.”

18 The Honourable Supreme Court while dealing with the case of Queen's Educational Society (supra) has dealt with the decision of the Division Bench of Punjab and Haryana High Court in the case of Pine Grove International Charitable Trust v. Union of India, [2010] 327 ITR 273 and has confirmed the view expressed by the Punjab and Haryana High Court with regard to applicability of Section 10(23C)(vi) of the Act. The Honourable Apex Court has also considered different judgments of various High Courts which have relied upon the decision of the Pine Grove International Charitable Trust (supra) and the observations are reflected in paragraph 23 of the judgment. It has also been held by the Honourable Apex Court that the Assessing Authority under the Act can monitor the income and expenditure of the assessee who has been granted the certificate under Section 10(23C)(vi) of the Act. The relevant paragraph viz. paragraph 25 of the aforesaid judgment in the case of Queen's Educational Society (supra) reads as under:

“25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments

stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act.”

The case relied upon by the petitioner of Director of Income-tax (Exemption) (supra) delivered by the Division Bench of this Court has dealt with a case of an educational institution in appeal for which the Division Bench has opportunity to examine the income and expenditure of the educational institution. In our opinion, in the present facts and circumstances of the case, the same would not be applicable.

19 Considering the overall facts and circumstances of the case, the object of the petitioner institution, we are of the opinion that the petitioner institution is established for the sole purpose of imparting education in a specialised field. Hence, the petition is allowed. Order dated 29th September 2014 passed by the Respondent-Chief Commissioner of Income-tax, Ahmedabad-IV vide which he refused to issue exemption certificate under Section 10(23C)(vi) of the Act in favour of the petitioner has been set aside. Rule is made absolute.

(A.J.DESAI, J.)

(A.G.URAIZEE, J.)

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