

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18<sup>TH</sup> DAY OF MAY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

**I.T.A. NO.398 OF 2012**

**BETWEEN:**

1. THE DIRECTOR OF INCOME-TAX  
EXEMPTIONS  
C.R.BUILDING  
QUEENS ROAD  
BANGALORE.
2. THE ASSISTANT DIRECTOR OF  
INCOME-TAX (EXEMPTIONS)  
CIRCLE - 17(1)  
C.R.BUILDING  
QUEENS ROAD  
BANGALORE.

... APPELLANTS

(By Sri.K.V.ARAVIND, ADV.,)

**AND:**

KARNATAKA TEXT BOOK SOCIETY  
NO.4, 100 FT RING ROAD  
BSK 3<sup>RD</sup> STAGE  
BANGALORE - 560 085  
BANGALORE - 560 005.

(BY GOVT ADV., )

... RESPONDENT

THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04.07.2012 PASSED IN ITA NO.892/BANG/2011, FOR THE ASSESSMENT YEAR 2007-08, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASSED TO: (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ETC.

THIS ITA COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal has under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to assessment year 2007-08. The appeal was admitted by a bench of this Court by order dated 28.02.2013 on following substantial questions of law:

- (i) *Whether the appellate authorities were correct in holding that the assessee is eligible for exemption under Section 10(23C)(iiiab) of the Act even though no claim for exemption was made in the return of income?*
- (ii) *Whether the Appellate Authorities were correct in allowing exemption under Section 10(23C)(iiiab) of the Act when the assessee is neither a University nor*

*educational institution existing solely for educational purposes?*

2. Facts giving rise to filing of this appeal briefly stated are that assessee is a society promoted by Government of Karnataka to acquire and to take over the business and other activities of Government of Karnataka relating to preparation, printing, publication and distribution of school text books, as well as to publish, print, sale, supply or otherwise being text books, note books and other books and literature on all subjects in different languages and to make the same available at reasonable prices before commencement of the academic session. The society is also required to get books in different languages written by committee of experts on various subjects as per the syllabi approved by Government of Karnataka and other competent authority etc. The assessee filed its return of income for the assessment year 2007-08 and deducted unspent amount of Rs.7,42,50,576/- to the utilized in the financial year 2007-2008 out of total grant received by the government to the extent of Rs.13,01,21,594/-. The aforesaid amount was claimed as exemption under Section 11 read with

Explanation 2 of the Act. The Society came into existence with effect from 1.04.2006. The assessing officer by an order dated 30.12.2009 rejected the claim under Section 11 of the Act on the ground that assessee has not obtained registration under Section 12AA of the Act. It was further held that in the absence of registration under Section 12AA of the Act, the exemption under Section 11 cannot be allowed. Accordingly, it was held that assessee is liable to pay tax, surcharge as well as interest to the tune of Rs.3,45,17,734/-.

3. Being aggrieved, the assessee filed an appeal. The Commissioner of Income Tax (Appeals) inter alia by placing reliance on the decision of the Supreme Court in the case of **'ASSAM TEXT BOOK PRODUCTION AND PUBLICATION CORPORATION LTD. VS. CIT', [2009] 319 ITR 317** held that state text books societies are entitled for exemption under Section 10(22) of the Act, which was similar to Section 10(23C) of the Act before its amendment. Thus, it was held that the assessee was held entitled to exemption under Section 10(23C)(iiiab) of the Act and the

addition made by the assessing officer was deleted and the appeal was allowed. The Revenue challenged the aforesaid order in appeal before the Income Tax Appellate Tribunal. The tribunal by an order dated 04.07.2012 affirmed the order passed by the Appellate Authority. Being aggrieved, the Revenue is in appeal before us.

4. Learned counsel for the revenue submitted that the assessee would not fall within the category of educational institution and the assessee is carrying on an activity which falls under Section 10(23C)(iv) of the Act and therefore, the approval from the prescribed authority is mandatory. It is further submitted that since, the assessee has not obtained any approval, therefore, the Commissioner of Income Tax (Appeals) as well as Income Tax Appellate Tribunal erred in setting aside the order passed by the Assessing Officer. It is further submitted that the judgment relied upon by the tribunal in the case of **ASSAM TEXT BOOK PRODUCTION AND PUBLICATION CORPORATION LTD.**, supra is in the context of Section 10(22), which has now been omitted by virtue of an amendment.

5. On the other hand, learned Government Advocate has supported the order passed by the Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal.

6. We have considered the submissions made on both the sides and have perused the record. The Supreme Court in **ASSAM TEXT BOOK PRODUCTION AND PUBLICATION CORPORATION LTD., supra** has interpreted the definition of an educational institution in para 6. The relevant extract of which is reproduced below for the facility of reference:

*Following the judgment of the Rajasthan High Court, we are of the view that, in this case, the High Court, in its impugned judgment, has not considered the historical background in which the Corporation came to be constituted; secondly, the High Court ought to have considered the source of funding, the share-holding pattern and aspects, such as Return on Investment; thirdly, it has not considered the letters issued by*

*C.B.D.T. which are referred to in the judgment of the Rajasthan High Court granting benefit of exemption to various Board/Societies in the country under Section 10(22) of the Act; fourthly, it has failed to consider the judgments mentioned hereinabove; and lastly, it has failed to consider the letter of the Central Government dated 9th July, 1973, to the effect that all State-controlled Educational Committee(s)/Board(s) have been constituted to implement the Educational policy of the State(s); consequently, they should be treated as Educational Institution.*

7. In view of the aforesaid enunciation of law by the Supreme Court, it is evident that all State controlled educational committees / boards that have been constituted to implement the educational policy of the States have to be treated as educational institutions.

8. In view of the aforesaid enunciation of law by the Supreme Court, the assessee, which has been constituted to implement the educational policy of the State has to be

treated as an educational institution and is consequently entitled to the benefit of exemption under Section 10(22) of the Act. In view of preceding analysis, the substantial questions of law framed by this court are answered against revenue.

In the result, we do not find any merit in this appeal. The same fails and is hereby dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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