

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 26395 of 2014

Date of decision: 18.10.2016

Amrawati Welfare Society Panchkula ... Petitioner
versus
Central Board of Direct Taxes New Delhi and others Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. Pankaj Jain, Senior Advocate with
Mr. Sachin Bhardwaj, Advocate
Mr. Divya Suri, Advocate for the petitioner.
Mr. Denesh Goyal, Advocate for the respondents.

S. J. VAZIFDAR, CJ. (ORAL)

1. The petitioner has challenged the order passed by the Chief Commissioner of Income Tax, Amritsar-respondent No.3, rejecting its application for registration under Section 10 (23C)(vi) of the Income Tax Act, 1961 for the year 01.04.2012 onwards.

2. The petitioner has filed an application for registration under Section 10 (23C) (vi) on 27.09.2013. Section 10 (23C)(vi) reads as under:

Incomes not included in total income

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

*(23C) any income received by any person on behalf of -
(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 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) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via).

3. The petitioner made an application for the exemption under the first Proviso in Form No. 56D as required under Rule 2CA of the Income Tax Rules, 1962. Mr. Pankaj Jain, Learned senior counsel appearing on behalf of the petitioner admits that as on date the petitioner intended carrying on not only educational activities but also other activities of charitable nature. In our view, in that event, the petitioner was not entitled to be granted the exemption under Section 10 (23C)(vi) read with the first provision thereto. Section 10 (23C)(vi) expressly refers to any University or other educational institution existing solely for educational purposes. No other purpose charitable or

otherwise is contemplated under this provision. If, therefore, the petitioner intended carrying out any activities other than for educational purposes, it would not be entitled to the exemption under the said Section.

4. Mr. Jain then submitted that the petitioner would confine its activities with respect to educational purposes and for no other purposes charitable or otherwise. If such an undertaking is furnished, whether in the same application or by way of a separate application with this clarification and with undertakings to that effect, the respondents would consider the same afresh.

5. By the impugned order, the application appears to have been rejected also on the ground that the petitioner has shown M/s Amarnath Builders Private Limited (for short the 'Company') as a creditor for the sum of about Rs. 37 lacs. It was inferred from this that the petitioner is involved in commercial activities for profit. Mr. Jain states that this is an interest free loan granted by the Company to the petitioner exclusively for the purpose of establishing the educational institution run/managed by the petitioner. In fact, the company has also leased land in favour of the petitioner for the purpose of running the educational institution thereon. We will refer to the lease later with reference to the other objection. If the company has granted an interest free loan to the petitioner for the purpose of establishing and running the educational institution, the exemption cannot be refused. The mere receipt of an interest free loan is not indicative of a commercial activity

for profit. However, whether the loan was in fact so granted as alleged by the petitioner is another matter which respondent No.3 would consider in the event of a fresh application or an additional affidavit in support of the existing application being filed.

6. Lastly, respondent No.3 appears to have rejected the application also on the ground that there is nothing to indicate as to what would happen to the construction put up on the land leased by the company to the petitioner for the purpose of setting up the educational institution.

7. The company and the petitioner had admittedly entered into a lease deed dated 12.10.2011 under which the company leased in favour of the petitioner land measuring in the aggregate about 5,600 square meters in a colony developed by the said company. The lease was at a nominal rent of Rs. 72, 800/- for a period of 30 years. The period of 30 years was extendable on terms and conditions to be mutually agreed upon. On the expiry of the lease by efflux of time, the lessee, i.e. the petitioner would be entitled to remove the construction upon the leased land. Clauses 1 & 6 of the lease deed read as under:

1. The school building at the above mentioned sites shall be constructed by the owner/lesser and the construction charges shall not charged to the Lessee. After construction of building. The same shall be handed over to the Lessee to run the schools.

6. That the lessee has taken the above said school for the

education use and the land for the construction of school use at their own costs risk and responsibility and whenever the lessee vacate the above said building then the lessee will handover the same in good condition in which condition they have taken it is also agreed between both the parties that whenever the tenant vacate the building which has been constructed over the vacant land then they can remove the structure over the same and if they are not interested to do so or unable to remove the same then the lesser will not pay any amount for the same and no other adjustment for the costs will be made.

8. The lease deed is clear. In fact, it confers a benefit upon the petitioner to the extent that although the construction is put up by the lessor i.e. the Company at its own cost as stipulated in Clause 1, the petitioner is entitled under Clause 6 to remove the construction upon the expiry of the terms of the lease. There is no ambiguity in these provisos. The terms and conditions of the lease deed cannot be a ground for refusing the exemption sought under Section 10 (23C)(vi).

9. The petition is, therefore, disposed of with liberty to the petitioner to either file a fresh affidavit in support of its existing application or a fresh application containing the necessary undertakings confining its activities only to educational purposes. The same shall be decided on its own merits. All the contentions except those decided in this judgment are kept open.

Needless to state, in the event of a fresh order having passed upon the petitioner's application, the impugned order would be substituted by the same.

**(S.J. VAZIFDAR)
CHIEF JUSTICE**

**(DEEPAK SIBAL)
JUDGE**

**18.10.2016
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Whether speaking/reasoned : Yes
Whether reportable : Yes



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